DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2011–0096: 4500030114]

RIN 1018–AX38

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southern Selkirk Mountains Population of Woodland Caribou

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, designate critical habitat for the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*) under the Endangered Species Act. In total, approximately 30,010 acres (12,145 hectares) is being designated as critical habitat. The critical habitat is located in Boundary County, Idaho, and Pend Oreille County, Washington. We are finalizing this action in compliance with our obligation under the Act and in compliance with a court-approved settlement agreement. The effect of this regulation is to conserve the habitat essential to the southern Selkirk Mountains population of woodland caribou.

DATES: This rule becomes effective on December 28, 2012.

ADDRESSES: This final rule and the associated final economic analysis are available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262.

The coordinates or plot points or both from which the map for this critical habitat designation was generated are included in the administrative record and are available at *http://www.fws.gov/idaho/SpeciesNews.htm,* at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2011–0096, and at the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information developed for this critical habitat designation is available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Kelly, State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a final rule to designate critical habitat for the southern Selkirk Mountains population of woodland caribou (*Rangifer tarandus caribou*), currently listed as an endangered species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed through rulemaking. The critical habitat area we are designating in this rule constitutes our current best assessment of the areas that meet the definition of critical habitat for the southern Selkirk Mountains population of woodland caribou. Here we are designating approximately 30,010 acres (ac) (12,145 hectares (ha)) in one unit within Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern Selkirk Mountains population of woodland caribou. This designation represents a reduction of approximately 345,552 ac (139,840 ha) from the critical habitat originally proposed for designation (76 FR 74018, November 30, 2011); and reflects a 1,000 foot (ft) (about 300 meter (m)) change in elevation from 4,000 ft (1,220 m) in the proposed rule, to an elevation at or above 5,000 ft (1,520 m) in the final critical habitat designation. Literature and information we have reviewed, and peer review comments received, confirm that although caribou may use elevations below 5,000 ft (1,520 m), habitats at this elevation and above are essential to their conservation. This revision is more fully explained in the ''*Criteria Used to Define Critical Habitat''* section. The primary factors that were considered and influenced this change from the proposed rule included: (1) A revised determination of the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing, based on comments we received, including peer reviewers, which caused us to reevaluate surveys conducted by Scott and Servheen (1984, 1985); (2) census monitoring documenting low numbers of individual caribou observed in the United States during those annual surveys; (3) caribou observations within the United States for several years have consistently been limited to areas close to the United States–Canada border; (4) information and literature reporting the overall decline of the subspecies mountain caribou (*Rangifer tarandus caribou*) across its range, and in particular the decline of woodland caribou populations in the southern extent of their range, including the southern Selkirk Mountains population of woodland caribou; (5) information on areas currently conserved and managed for the conservation of woodland caribou in the Selkirk Mountains in British Columbia, Canada, including the status of the Canadian recovery actions for mountain caribou; and (6) the applicability as well as the status of the recovery objectives identified in the 1994 Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994).

All of the area being designated as critical habitat is federally owned lands under management of the U.S. Forest Service (USFS). The areas being designated were occupied at the time of listing under the Act (49 FR 7390: February 29, 1984), and are essential to the conservation of the southern Selkirk Mountains population of woodland caribou.

We have prepared an economic analysis of the designation of critical habitat. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designation and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on May 31, 2012 (77 FR 32075), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA) concurrently with this final determination.

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

information received from the public during the comment periods.

Background

It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for the southern Selkirk Mountains population of woodland caribou under the Act (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology of the southern Selkirk Mountains population of woodland caribou, refer to the final listing rule published in the **Federal Register** on February 29, 1984 (49 FR 7390), and the 1985 final recovery plan (USFWS 1985), which was revised in 1994 (USFWS 1994), and is available from the Idaho Fish and Wildlife Office (see **ADDRESSES** section). For information on southern Selkirk Mountains population of woodland caribou proposed critical habitat, refer to the proposed rule published in the **Federal Register** on November 30, 2011 (76 FR 74018). Information on the associated DEA for the proposed rule to designate revised critical habitat was published in the **Federal Register** on May 31, 2012 (77 FR 32075).

Nomenclature

In 1984, we published a final rule listing the transboundary population of woodland caribou (*Rangifer tarandus caribou*) found in Idaho, Washington, and southern British Columbia, '' * * * sometimes known as the southern Selkirk Mountain herd'' (49 FR 7390; February 29, 1984). At that time woodland caribou, including the transboundary population, were a recognized subspecies of caribou (*R. tarandus*). Within the woodland caribou subspecies, caribou populations are often further divided into three different ''ecotypes'': Boreal, northern, and mountain, based on differences in habitat use, feeding behavior, and migration patterns (Hatter 2000, p. 631; Mountain Caribou Science Team 2005, p. 1).

The southern Selkirk Mountains population of woodland caribou is included within the mountain caribou ecotype (mountain caribou) that currently occupies southeastern British Columbia (B.C.), northern Idaho, and northeastern Washington near the international border to northeast of Prince George (Wittmer *et al.* 2005, p. 408). The mountain caribou ecotype is distinguished from other woodland caribou ecotypes by behavioral and ecological characteristics, rather than genetic characteristics that conclude all woodland caribou ecotypes are genetically similar (Mountain Caribou Science Team 2005, p. 1). The mountain caribou ecotype is closely associated with high-elevation, late-successional, coniferous forests where their primary winter food, arboreal lichens, occurs.

The term ''mountain caribou'' is a common designation used throughout the scientific literature to describe the mountain/arboreal-lichen feeding ecotype of woodland caribou populations found in the mountainous regions of southeastern British Columbia, including the transboundary southern Selkirk Mountains population of woodland caribou (Mountain Caribou Science Team 2005, p. 1). In this final rule, use of the term mountain caribou refers to descriptions of the subspecies woodland caribou in general, and we use the term southern Selkirk Mountains population of woodland caribou when referencing the listed transboundary population.

Previous Federal Actions

In 1980, the Service received petitions to list the South Selkirk Mountains population of woodland caribou as endangered under the Endangered Species Act from the Idaho Department of Fish and Game (IDFG) and Dean Carrier, a U.S. Forest Service (USFS) staff biologist and former chairman of the International Mountain Caribou Technical Committee (IMCTC). At that time, the population was believed to consist of 13 to 20 animals (48 FR 1722). Following a review of the petition and other data readily available, the southern Selkirk Mountains woodland caribou population in northeastern Washington, northern Idaho, and southeastern B.C. was listed as endangered under the Act's emergency procedures on January 14, 1983 (48 FR 1722). A second emergency rule was published on October 25, 1983 (48 FR 49245), and a final rule listing the southern Selkirk Mountains woodland caribou population as endangered was published on February 29, 1984 (49 FR 7390). The designation of critical habitat was determined to be not prudent at that time, since increased poaching could result from the publication of maps showing areas used by the species. A Management Plan/Recovery Plan for Selkirk Caribou was approved by the Service in 1985 (USFWS 1985), and revised in 1994 (USFWS 1994).

Notices of 90-day findings on two petitions to delist the southern Selkirk Mountains population of woodland caribou were published in the **Federal Register** on November 29, 1993 (58 FR 62623), and November 1, 2000 (65 FR 65287). Both petitions were submitted by Mr. Peter B. Wilson, representing the Greater Bonners Ferry Chamber of Commerce, in Bonners Ferry, Idaho. Our response to both petitions stated that the petitions did not present substantial scientific or commercial information indicating that delisting of the woodland caribou may be warranted.

On August 17, 2005, a complaint was filed in Federal district court challenging two biological opinions issued by the Service, and USFS management actions within southern Selkirk Mountains caribou habitat and the recovery area. The plaintiffs included Defenders of Wildlife, Conservation Northwest, the Lands Council, Selkirk Conservation Alliance, Idaho Conservation League, and Center for Biological Diversity. The lawsuit challenged, in part, no jeopardy biological opinions on the USFS Land and Resource Management Plans for the Idaho Panhandle (IPNF) and Colville (CNF) National Forests, and the USFS' failure to comply with the incidental take statements in the biological opinions.

In December 2005, the Court granted a preliminary injunction prohibiting snowmobile trail grooming within the caribou recovery area on the IPNF during the winter of 2005–2006. In November 2006, the Court granted a modified injunction restricting snowmobiling and snowmobile trail grooming on portions of the IPNF within the southern Selkirk Mountains caribou recovery area. On February 14, 2007, the Court ordered a modification of the current injunction to add a protected caribou travel corridor connecting habitat in the United States portion of the southern Selkirk Mountains with habitat in British Columbia. This injunction is currently in effect, pending the completion of section 7 consultation on the IPNF's proposed winter travel plan.

On April 11, 2006, a notice of initiation of 5-year reviews for 70 species in Idaho, Oregon, Washington, and Hawaii, and Guam was published in the **Federal Register** (69 FR 18345), including the southern Selkirk Mountains population of woodland caribou. The Southern Selkirk Mountains Caribou Population 5-Year Review was completed December 5, 2008 (USFWS, 2008a).

On December 6, 2002, the Defenders of Wildlife, Lands Council, Selkirk Conservation Alliance, and Center for Biological Diversity (plaintiffs) petitioned the Service to designate critical habitat for the endangered southern Selkirk Mountains population of woodland caribou. On February 10, 2003, we acknowledged receipt of the plaintiff's petition, and stated we were unable to address the petition at that

time due to budgetary constraints. On January 15, 2009, a complaint for declaratory and injunctive relief (*Defenders of Wildlife et al.,* v. *Salazar,* CV–09–15–EFS) was filed in Federal District Court, alleging that the Service's failure to make a decision more than 6 years after the petition was submitted violated the Administrative Procedure Act (5 U.S.C. 551–559, 701–706). In a stipulated settlement agreement, we agreed to make a critical habitat prudency determination, and if determined to be prudent, to submit a proposed critical habitat rule to the **Federal Register** on or before November 20, 2011, which was accomplished. We also agreed to deliver a final critical habitat rule to the **Federal Register** by November 20, 2012.

A proposed rule (76 FR 74018) to designate approximately 375,562 ac (151,985 ha) as critical habitat in Boundary and Bonner Counties in Idaho, and Pend Oreille County in Washington was submitted to the **Federal Register** on November 20, 2011, and published on November 30, 2011.

On May 9, 2012, we received a petition dated May 9, 2012, from Bonner County, Idaho, and the Idaho State Snowmobile Association, which calls into question whether the southern Selkirk Mountains population of woodland caribou is a listable entity under the Act. We are developing a response to that petition.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the southern Selkirk Mountains population of woodland caribou during three comment periods. The first comment period, associated with the publication of the proposed rule (76 FR 74018), opened on November 30, 2011, and closed on January 30, 2012. We contacted Federal, State, Tribal, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule. In response to a request we received during the first public comment period from Idaho's Governor C.L. ''Butch'' Otter, the Kootenai Tribe of Idaho, and Boundary County, Idaho, to allow the public more time to submit comments and to hold an informational session and public hearing, we opened a second comment period on March 21, 2012 (77 FR 16512), for an additional 60 days. The Service-hosted informational session and public hearing were held in Bonner's Ferry, Idaho, on April 28, 2012. A third public comment period, associated with the publication of the DEA of the proposed designation and an amended required determinations section, opened on May 31, 2012, and closed on July 2, 2012 (77 FR 32075). The Service hosted an additional informational session and public hearing during this comment period on June 16, 2012, in Coolin, Idaho.

In acknowledgement of our responsibility to work directly with tribes, and to make information available regarding the proposed critical habitat designation, the Service met with the Kootenai Tribe of Idaho on January 9, 2012, in Bonners Ferry, Idaho, and participated on conference calls with the Kootenai Tribe of Idaho on May 24, 2012. The Service also discussed the proposal with the Kalispel Tribe of Indians on several occasions, including February 23, March 12, and April 26, 2012.

The Service also responded to several requests for public information and coordination meetings, including: (1) the Kootenai Valley Resource Initiative (KVRI) on January 9, 2012, in Bonners Ferry, Idaho; (2) the Bonner County Commissioners on January 24, February 28, March 26, and June 4, 2012, in Bonner County, Idaho; and (3) the Boundary County Commissioners on April 19, 2012, in Boundary County, Idaho.

During the first 60-day comment period, we received 172 comment letters addressing the proposed critical habitat designation. During the second 60-day comment period, we received an additional 118 comments from individuals or organizations, with an additional 37 written or oral comments provided at the April 28, 2012, public hearing in Bonner's Ferry, Idaho. During the third and final comment period, we received 10 comments on the proposal and the DEA, and testimony from 11 individuals at the public hearing.

During the public comments periods, comments were received from Federal, State, and local agencies, peer reviewers with scientific expertise, the Kootenai Tribe of Idaho, the Kalispel Tribe of Indians, the Canadian Government, private citizens, nongovernmental organizations, private companies, business owners, elected officials, recreational user groups, commercial and trade organizations, and others. Approximately 60 unique individual comments received were generally supportive of the proposed rule, while approximately 70 unique individual comments were in opposition to the proposed rule. Through campaigns sponsored by nongovernmental organizations, we received an additional 64,258 comments in support of the proposed designation consisting entirely of template letters.

The Service received many comments outside the scope of this rulemaking, including issues such as: (a) Threats to the species such as recreation, fires, and road building, management and control of predators and or prey species, previous actions taken by the Service to introduce or protect other listed species such as gray wolves (*Canis lupus*), grizzly bears (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), and others (see further discussion below); (b) strengths or weaknesses of the Endangered Species Act, and whether the Act should be changed or eliminated; (c) the taxonomic description of the southern Selkirk Mountains population of woodland caribou, its current listing status as an endangered species, and whether the population is extinct; (d) a recent petition received by the Service to delist the species; (e) addressing Highway 3 in Canada as a migration barrier; (f) hunting practices or regulations; and (g) that the proposed rule to designate critical habitat is in response to an ''agenda'' put forth by ''environmental groups.''

We received numerous comments specific to the threat of predation on the southern Selkirk Mountains population of woodland caribou, with many stating that gray wolves and other species such as grizzly bear, black bear (*Ursus americanus*), Canada lynx, and others are preying on caribou and should be managed. The Service acknowledges that predation is one of several important factors affecting this population of woodland caribou. In fact, predation is discussed frequently in the proposed rule, including under *Physical or Biological Features* (PBFs), where we described the need for: (1) Caribou to disperse in low numbers at high elevation; (2) large contiguous areas to avoid predators; and (3) female caribou to be able to access high-elevation alpine areas for calving, which are likely to be predator free. Predation is also addressed in the 1994 Recovery Plan (USFWS 1994) as a factor potentially affecting the status of the caribou population. Although addressing the threat of predation is outside of the scope of this rule, the Service agrees that successful caribou conservation and recovery efforts will need to address predation on the southern Selkirk Mountains population of woodland caribou, which will require effective coordination with other Federal and State agencies, the Coleville and Idaho Panhandle National Forests, tribes, and Canada.

Similarly, we received numerous comments regarding the effectiveness of past augmentation efforts to supplement the southern Selkirk Mountains population of woodland caribou, which were conducted by the Service, Canada, and State wildlife agencies. Efforts to augment the existing woodland caribou population with 103 animals from source herds in British Columbia between 1987 and 1990, and 1996 and 1998, have not resulted in a long-term improvement in caribou distribution throughout the southern Selkirk Mountains. A large number of the transplanted caribou died within the first year of augmentation, and there has been no long term increase in the population (USFWS 2008a). The number of woodland caribou detected in the United States has continued to dwindle, and annual census surveys continue to find the bulk of the remaining population occupying habitats in British Columbia. The most recent census information demonstrates a decline from 46 caribou in 2009 to 27 animals in 2012, although the cause of this decline has not been described (Degroot and Wakkinen 2012, p.2). The 2011 survey documented zero caribou in the United States, and the 2012 survey documented 4 caribou on Little Snowy Top Mountain, Idaho. No other tracks were observed in the United States (DeGroot and Wakkinen 2012, p. 5).

Although important and integral to the population's recovery, addressing threats such as predation, as well as efforts to stabilize or increase the southern Selkirk Mountains population of woodland caribou, are outside of the scope of this rulemaking. These issues will be addressed, as appropriate, within the scope of recovery actions for this species. For the purposes of this rulemaking, we are fully considering and responding to comments related to the proposed critical habitat designation and DEA. Although other comments are acknowledged and appreciated, we have not specifically responded to those that are outside of the scope of the proposed rule.

All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received were grouped into 20 general issues specifically relating to the proposed critical habitat designation for the southern Selkirk Mountains population of woodland caribou, and are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from four knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all four peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the southern Selkirk Mountains population of woodland caribou. The peer reviewers had differing assessments of our methods and conclusions, and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review Comments

(1) *Comment:* One peer reviewer commented that the proposed rule was very thorough and accurate, but the reviewer did not submit any additional comments. The three peer reviewers who did provide substantive comments stated that the entire area we proposed for designation as critical habitat was not likely occupied by the species at the time of listing, and stated that the February 29, 1984, final rule listing the species (49 FR 7390) did not define ''occupancy'', but rather identified a ''total approximate area of normal utilization'' within the conterminous United States (U.S.). These peer reviewers primarily point to aerial surveys and telemetry studies of radio-collared caribou at the time of listing (Scott and Servheen 1984) as the basis for their comment on occupancy. This study documented caribou primarily utilizing habitat in British Columbia, (B.C.), Canada, and those areas in the United States immediately adjacent to the international boundary with Canada. This was a comment also made by the State of Idaho, the Kootenai Tribe of Idaho, and numerous other public commenters.

Our Response: In developing our proposed critical habitat rule, we reviewed the final listing rule (49 FR 7390) to identify the specific areas within the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing. These areas also contained the physical or biological features essential to the conservation of these caribou, which may require special management considerations or protections, and therefore met the definition of critical habitat under section 3(5)(A) of the Act. Neither the January 14, 1983, emergency listing (48 FR 1722), nor the February 29, 1984, final listing rule (49 FR 7390), defined ''occupancy'', but these rules did refer to the ''approximate area of utilization'' (48 FR 1723), and ''area of normal utilization'' (49 FR 7390). We therefore equated ''occupancy at the time of listing'' with the ''approximate area of utilization'' and ''area of normal utilization'' in the proposed rule. However, comments submitted by the peer reviewers caused us to reexamine the basis of our analysis pertaining to the geographical area occupied by the species in 1983.

Scott and Servheen (1984, p. 16; 1985, p. 27), state the following in the background section of their job progress reports on caribou ecology: ''As the number of U.S. sightings declined since the early 1970's, concern has mounted that caribou may be abandoning the U.S. portion of their range.'' Scott and Servheen (1984, 1985, entire), conducted studies of radio-collared caribou to determine population numbers and composition, and helicopter surveys over significant areas of the Selkirk Mountains within the historic range of woodland caribou in an effort to: (1) Estimate the population size and sex/age composition; (2) determine mortality rates and causes; (3) determine reproductive rates and calving areas; (4) determine seasonal use areas; (5) identify seasonal and year-long habitat utilization patterns; (6) estimate seasonal caribou food habitat preferences; and (7) attempt to achieve a total count of the population. The helicopter surveys covered extensive areas of potential woodland caribou habitat within the Selkirk Mountains in Idaho and Washington (Scott and Servheen 1984, pp. 74–75). During their study, Scott and Servheen (1984, pp. 16–28) documented extensive use by caribou of habitat in Canada, with two bulls utilizing habitat near Little Snowy Top and Upper Hughes Ridge in Idaho and Sullivan Creek in Washington (p. 19). They did not document any caribou further south within Washington or Idaho during the course of the helicopter surveys. We are relying on Scott and Servheen survey results to determine occupancy at the time of listing, since the surveys were conducted during the timeframe in which the population was listed. Consequently, we have determined that the area generally depicted in Scott and Servheen (1984, p. 27), adjusted for

elevation and habitat based on the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem, represents the best available scientific information regarding the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing. Based on the best available information, we are designating 30,010 ac (12,145 ha) of critical habitat for the southern Selkirk Mountains population of woodland caribou in the United States. These areas were known to be occupied at the time of listing in 1983 and 1984, they are essential to the conservation of the species, they require special management, and they therefore meet the definition of critical habitat under section 3(5)(A)(i) of the Act.

(2) *Comment:* One peer reviewer commented that the characterization of six seasonal habitats (early winter, late winter, spring, calving, summer, and fall) for the southern Selkirk Mountains population of woodland caribou in the proposed rule was inaccurate, as it is based on older scientific information, and suggested more recent scientific information describing caribou seasonal habitats based on distinct shifts in caribou elevation use is a more proper characterization of caribou seasonal habitats.

Our Response: We agree and have changed the seasonal definitions in the final rule to reflect the five seasonal definitions identified by Kinley and Apps (2007), which are: Early winter (October 17 to January 18), late winter (January 19 to April 19), spring (April 20 to July 7), calving (June 1 to July 7), and summer (July 8 to October 16).

(3) *Comment:* Two peer reviewers commented that the proposed rule inaccurately identifies early winter as the season during which caribou typically make the longest within-season (intra-seasonal) landscape movements. One peer reviewer noted that the stated range from several to 30 mi (48 km) of movement during the winter season in the proposed rule was inaccurate as well. Both reviewers referenced research conducted by Wakkinen and Slone (2010), which analyzed seasonal movement patterns of radio-collared caribou from 1988 to 2006, and found that caribou typically make the longest movements during spring and summer seasons. One peer reviewer noted that Wakkinen and Slone's (2010) analysis did not detect any difference in the median distance of movement by caribou between seasons (interseasonal).

Our Response: The identification of winter seasonal movement distances stated in the proposed rule was obtained from a USFS report (USFS 2004, p. 22), which used a compilation of historic and more recent anecdotal observations of caribou movements and radio-collared caribou to provide a range for caribou movements. Wakkinen and Slone's (2010) analysis, which is based on over 4,000 radio telemetry points obtained from 66 individual caribou over an 18-year period from 1988 to 2006, provided median values for intra- and interseasonal movements. As Wakkinen and Slone's (2010) report is more recent and is scientifically robust, we have incorporated their findings into the language of this final rule.

(4) *Comment:* One peer reviewer commented that the proposed rule's characterization of early and late winter habitats as being the most important habitats to caribou and the most limiting type of habitats on the landscape, is not supported by the science, as there is a high degree of overlap between the seasonal habitats. Given the high degree of overlap and importance of all seasonal habitats on the southern Selkirk Mountains population of woodland caribou recovery, it would be difficult to prioritize early and late winter habitats as having overriding importance to caribou or as being more limited on the landscape than are other seasonal habitats.

Our Response: We acknowledge that, from a purely geographical standpoint, Kinley and Apps (2007) habitat modeling demonstrated a high degree of overlap between caribou seasonal habitats, and that all seasonal habitats are important to caribou. From a physiological and nutritional standpoint, early and late winter seasonal habitat foraging opportunities can be restricted by snow conditions depending on the variability of snowpack in any given year, and therefore are generally less available than summer and spring habitats and foraging opportunities. During summer and spring seasons, the physical ability of caribou to move is much less restricted, and there is a wider assortment and more availability of foraging plants available to caribou. During early and late winter, snow conditions and depths restrict caribou movement and foraging opportunities. In late winter, caribou must subsist almost entirely upon arboreal lichens, which are typically provided by mature subalpine fir stands with appropriate moisture conditions. Additionally, winter conditions (cold temperatures, deep snow) impose high energetic costs to caribou. Thus, from a physiological and nutritional standpoint, early and late winter habitats are very important to caribou and may be more limited to caribou. However, notwithstanding the above discussion, we understand the importance of high-quality spring and summer forage habitat at contributing to the ability of female caribou to calve and support their calves or to enter the breeding season in good physiological condition to survive the harsh winter conditions.

(5) *Comment:* One peer reviewer commented that language in the proposed rule implying that the ecotone between the subalpine fir/Engelmann spruce and cedar/hemlock zone occurs at around 4,000 ft (1,220 m) in elevation is inaccurate, and that the ecotone actually occurs approximately between the elevational band of 4,900 and 5,000 ft (1,490 and 1,520 m) (*i.e.,* a 100-foot elevational band ecotone).

Our Response: We agree, and we have provided the following clarification to that portion of the Primary Constituent Elements (PCE) in this final designation. According to Art Zack (USFS, pers. comm. 2012): ''In the Selkirk ecosystem, the average boundary between cedar/hemlock Vegetation Response Units (VRU) groups and subalpine fir VRU groups (or habitat type groups) is approximately 5,100 ft (1,550 m) elevation. However, this break will vary from place to place based on aspect, topography, landform, cold air drainage patterns, and local weather patterns. Based on a sample of 100 points on the break between these 2 groups, the standard deviation of this variation in the elevation break between these 2 categories was approximately 300 ft (90 m) in elevation. In very limited circumstances, lower elevation drainage bottoms that are below a high ridge and that have restricted cold air drainage out of the valley bottom, may have subalpine fir habitat types over 1,000 ft (30 m) lower in elevation than the normal boundary. However, these are very restricted geographically, and are typically linear features confined to the very lower valley bottom. Where two different VRU's or habitat type groups meet, it is often not a distinct hard line between the two types, but rather an ecotone where the two types gradually intergrade. On average, the estimated ecotone width between the subalpine fir habitat types and the lower elevation habitat type may be 200 ft (61 m) in elevation. However that ecotone width varies depending upon local environmental characteristics.''

(6) *Comment:* One peer reviewer noted that our definition of calving habitat in the proposed rule as comprising high-elevation, old-growth

forest ridgetops was too narrow and should also include high elevation alpine and non-forested areas in close proximity to forested mature and old-growth ridge tops as well as high elevation basins. The peer reviewer pointed to research demonstrating that caribou in the Selkirk Mountains use alpine scree sites as well as exposed cliff faces (Warren 1990; Allen 1998), and noted that the broader definition of calving habitat is supported by the analysis conducted by Kinley and Apps (2007), who demonstrated that pregnant females showed a preference for alpine at all scales and that, at the finest scale, caribou did not avoid non-forested conditions.

Our Response: We agree, and we have provided clarification to that portion of the PCE to identify that calving habitat includes more areas such as high-elevation basins in this final critical habitat designation.

(7) *Comment:* Two peer reviewers commented that the proposed rule's characterization of caribou movements during the spring and summer was inaccurate. Language in the proposed rule stated that during the spring and summer caribou move to lower elevations to forage on grasses, flowering plants, horsetails, willow and dwarf birch leaves and tips, sedges, and lichens in subalpine meadows (Paquet 1997, pp. 13, 16). The peer reviewers noted that Paquet (1997) also stated, ''in summer, mountain caribou move back to mid- and upper elevation spruce/alpine fir forests.''

Our Response: We agree, and we have provided language clarifying the discussion of summer and spring caribou movements in this final critical habitat designation.

(8) *Comment:* One peer reviewer commented that caribou spring habitat findings reported in Kinley and Apps (2007) conflicts with the spring habitat discussion in the proposed rule, which is based on the 1994 Recovery Plan (USFWS 1994), and Scott and Servheen's (1985) and Servheen and Lyon's (1989) research. The proposed rule stated that in spring caribou move to areas with green vegetation, and that these areas may overlap with early and late winter ranges at mid to lower elevations. The peer reviewer stated that Kinley and App's (2007) finding that caribou select for open-canopied stands of older subalpine fir/spruce habitats with high solar insolation at all scales with use of alpine and nonforested areas at broad scales only, conflicts with Scott and Servheen's (1985) research as it is referenced in the proposed rule.

Our Response: We do not interpret Kinley and App's (2007) findings as being in disagreement with our statement in the proposed rule that caribou will seek out areas with green vegetation in spring. We stated previously that there is a high degree of overlap between seasonal habitats, and caribou will seek out green vegetation in the spring regardless of whether it occurs in sivilculturally treated (*i.e.,* partial cut, clear-cut, seed/sapling) stands, natural openings within the forest canopy, or open-canopied stands.

(9) *Comment:* One peer reviewer stated the proposed rule incorrectly cited Stevenson *et al.* (2001) and Kinley and Apps (2007), as referring to western hemlock/western red cedar forests providing summer range for the southern Selkirk Mountains population of woodland caribou. Another peer reviewer commented that the proposed rule's description of summer habitat should also identify the importance and use of permanent lakes, bogs, and fens by caribou for feeding and bedding sites in the summer and fall months, as documented through research conducted by Freddy 1974; Johnson *et al.* 1977 and 1980; Warren 1990; and Allen 1998. One peer reviewer commented that the proposed rule's use of fall habitat to characterize seasonal habitat for caribou is inconsistent with the seasonal habitat definitions in Kinley and Apps (2007), which is considered to provide the best available scientific information on habitat and seasons of use by the southern Selkirk Mountains woodland caribou.

Our Response: We have corrected and clarified this statement in this final critical habitat designation to reflect that subalpine fir and spruce forests provide summer range for the southern Selkirk Mountains population of woodland caribou. We have removed the reference to hemlock/western red cedar forests as providing summer habitat. The final designation reflects that subalpine fir and spruce fir forests provide summer range for this species. Relative to the description of summer and fall habitat, we have expanded this description in this final designation. Regarding reference to fall habitats, as noted previously in our response to Comment 2, we have revised the seasonal habitat definitions in this final designation to be consistent with Kinley and Apps (2007).

(10) *Comment:* Two peer reviewers acknowledge that the proposed rule correctly identifies travel corridors as important habitat features supporting connectivity of seasonal caribou habitats. Both reviewers, however, suggested the travel corridor discussion in the proposed rule could be refined through more comprehensive consideration and interpretation of the available scientific information. One reviewer noted that Freddy (1974) identified specific routes in British Columbia that the southern Selkirk Mountains population of woodland caribou used repeatedly, which were natural passes along ridges, stream bottoms, forested areas, and areas connecting feeding and resting areas. The reviewer also noted that Freddy (1974) identified caribou movement from Kootenay Pass, British Columbia southward to Snowy Top Mountain, and from Monk Creek and Nun Creek, British Columbia to Continental Mountain via the Upper Priest River/American Falls drainage. Both reviewers noted that Wakkinen and Slone (2010) modeled travel corridors between areas of high- quality caribou habitat utilizing habitat quality maps developed by Kinley and Apps (2007).

Our Response: The southern Selkirk Mountains population of woodland caribou is a transboundary species that travels between British Columbia and the United States. We acknowledge the importance of maintaining habitat connectivity between British Columbia and the United States, and although we do not designate critical habitat in foreign countries, we have included a travel corridor modeled by Wakkinen and Slone (2010) that facilitates caribou movement between patches of high-quality habitat in the Unites States including Little Snowy Top Mountain in Idaho, and the Salmo Priest Wilderness in Washington, and connects with the Stagleap Provincial Park in British Columbia.

(11) *Comment:* One peer reviewer provided several scientific citations (Freddy 1974; Scott and Servheen 1985; Rominger and Oldemeyer 1989; Warren *et al.* 1996; and Allen 1998), and suggested the available science on the southern Selkirk Mountains population of woodland caribou indicates the appropriate elevation cutoff to identify critical early-winter habitat for this population is 4,500 ft (1,372 m).

Our Response: We agree that these citations provide additional scientific information in conjunction with other scientific literature, as well as peer review and substantive public comments, to determine the appropriate critical habitat elevation boundaries. However, there is a lot of uncertainty in making a designation of an ''absolute'' elevational point with which to designate critical habitat for a species such as the southern Selkirk Mountains population of caribou. Literature and information we reviewed, (such as Scott and Servheen 1984, 1985; MCTAC 2002; McKinley and Apps 2007; Wakkinen

and Slone 2010), and additional peer reviewer comments, indicate that although caribou have been known to use elevations below 5,000 ft (1,520 m), only habitats at 5,000 ft (1,520 m) in elevation and above are essential to caribou. The final critical habitat designation includes areas at 5,000 ft (1,520 m) and higher in elevation, based on the best available scientific information (see ''*Criteria Used To Identify Critical Habitat''*).

(12) *Comment:* One peer reviewer suggested the proposed rule lacked a complete discussion on potential sources of disturbance to the southern Selkirk Mountains population of woodland caribou. The reviewer suggested that other forms of human-caused disturbance during nonwinter months, in addition to snowmobiling impacts during winter, may be an important consideration in the conservation of caribou. Specifically, the reviewer stated ''* * * high elevation basins that include meadows and riparian areas are preferred habitat by woodland caribou. Such areas are often snow-free earlier in the season, provide good visibility, and include an abundance of arboreal lichen, grasses, and forbs. This makes them ideal habitat for caribou in general, and especially cows with calves. These areas also provide some of the most popular recreation destinations for backpacking, hiking and camping from July through October, with significantly increasing human use observed over the last two decades due to publicity from local advertisement and guide books.'' The reviewer also noted that the Service's 2001 Amended Biological Opinion for the continued implementation of the Idaho Panhandle National Forests (IPNF) Land and Resource Management Plan (LRMP) stated that increasing pressure during both winter and summer was decreasing habitat effectiveness for caribou (USFWS 2001, p. 17). The reviewer noted that several scientific documents support this presumption: Allen (1998) and Warren (1990) made field observations of transplanted caribou; Dumont (1993) concluded that interactions between caribou and hikers on preferred summer range likely increased caribou susceptibility to predation by pushing caribou into areas of reduced visibility; and Wittmer (2005), Compton *et al.* (1995), and Wakkinen and Johnson (2000) noted caribou are most susceptible to mortality from predation during the summer months.

Our Response: We appreciate the additional information provided to us by the peer reviewer. Although the intent of the proposed rule, as well as the final rule, is not to describe the threats to the southern Selkirk Mountains population of woodland caribou in a comprehensive manner, we have expanded our discussion to include other recreational forms of potential displacement and disturbance of caribou in the *Physical or Biological Feature* discussion within ''Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species'' portion of this final critical habitat designation.

(13) *Comment:* One peer reviewer questioned the proposed rule's statement that the ongoing loss and fragmentation of contiguous old-growth forests and forest habitat on National Forest System (NFS) lands within the caribou recovery zone is a result of a combination of timber harvest, road development, and wildfires. The reviewer stated that, due to a variety of policy and management decisions (*e.g.,* grizzly bear management guidelines, woodland caribou management guidelines), timber harvest on NFS lands within the caribou recovery zone is virtually nonexistent, and many roads have been decommissioned. Therefore, fragmentation and loss of caribou habitat within the caribou recovery zone on NFS lands due to timber harvesting and road construction has been greatly reduced over historical conditions. The reviewer also commented that the proposed rule failed to adequately consider the role that natural wildfire plays within this ecosystem as an agent of change and resetting natural succession on the landscape, because language in the proposed rule advocates the development of management actions to minimize the potential for wildfire, and the implementation of rapid response measures when wildfire occurs. The reviewer noted that wildfire is a natural disturbance agent within this ecosystem, which facilitates the development and maintenance of habitat for other listed species (*e.g.,* grizzly bear and white bark pine (*Pinus albicaulis*)), and that historical and recent fire suppression management actions and policies have adversely affected these species. Additionally, the reviewer commented that landscape analyses of changes in vegetation over time demonstrate an increase and/or maintenance in the amount and distribution of large-size classes of subalpine fir and moist, mixed-conifer (cedar, hemlock, grand fir, and larch forest), indicating a pattern ecosystem recovery from the large 1880 to 1890 and 1910 to 1946 wildfires that impacted caribou habitat.

Our Response: We acknowledge that implementation of southern Selkirk Mountains population of woodland caribou management standards and guidelines, grizzly bear access management standards and guidelines, as well as other management decisions, such as the 2008 Modified Idaho Roadless Rule and 2007 Northern Rockies Lynx Amendment, have reduced loss and fragmentation of old-growth forests on NFS lands within the area that was proposed for designation as critical habitat, over historical conditions. Implementation of these management decisions have and will continue to benefit caribou and caribou habitat. However, these management decisions do not prevent road construction or timber harvest (including old-growth forests) within the areas being designated as critical habitat under all circumstances. Thus, continued loss and fragmentation of caribou habitat (including old-growth forests) in an ecosystem that has been significantly altered from historical forest conditions continues to be a primary long-term threat to caribou. We agree that many acres of spruce/fir and cedar/hemlock forests that were set back to an early successional stage by large, historical, stand-replacement fires are in various stages of developing tree species and stand structure characteristics that are representative of late-successional spruce/fir and cedar hemlock forests through natural successional processes. Nonetheless, we acknowledge that natural wildfire plays an important role in maintaining a mosaic of forest successional stages that provides habitat for a variety of species endemic to this ecosystem, and that fire suppression can alter vegetative mosaics and species composition. Therefore, in this critical habitat designation we have incorporated language addressing the importance of developing and implementing a wildland fire use plan to allow for the nonsuppression of naturally ignited fires when appropriate, and the implementation of a prescribed fire program.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State of Idaho regarding the proposal to designate critical habitat for the southern Selkirk Mountains population of woodland caribou are addressed below.

(14) *Comment:* The State of Idaho questioned the appropriateness of

designating critical habitat based on a lower elevation of 4,000 ft (1,219 m), stating that caribou seldom use areas as low as this elevation. The State of Idaho referred to studies that report mean elevation use for caribou in the south Selkirk Mountains to be approximately 5,500 ft (1,675 m).

Our Response: We received numerous comments in addition to the State of Idaho regarding the science we used and synthesized to develop the proposed designation. We utilized all substantive input from these commenters in refining the designation (including the appropriate elevation boundary) of critical habitat for the southern Selkirk Mountains population of woodland caribou in this final rule. The elevations that were identified in the proposed rule have been revised in this final rule (see Primary Constituent Elements for the Southern Selkirk Mountains Population of Woodland Caribou, below). Literature and information we have since reviewed, such as Scott and Servheen 1984, 1985; MCTAC 2002; McKinley and Apps 2007; and Wakkinen and Slone 2010, as well as additional peer review comments, indicate that although caribou have been known to use elevations below 5,000 ft (1,520 m), only habitats at 5,000 ft (1,520 m) in elevation and above are essential to caribou. The final designation includes areas at 5,000 ft (1,520 m) and higher in elevation, based on the best available scientific information.

(15) *Comment:* The State of Idaho noted that forest practices such as partial cutting at higher elevations is common on Idaho managed lands, in reference to a statement in the proposed rule (76 FR 74025) that in the last decade, timber harvest has moved into high-elevation mature and old-growth habitat types due to more roads and more powerful machinery capable of traversing difficult terrains (Stevenson *et al.* 2001, p. 10). The State commented that during the two previous decades, Idaho Department of Lands foresters have not noted trends toward more powerful machinery capable of traversing difficult terrain, and that State timber sale contracts generally impose size limits on equipment, thereby eliminating the most powerful tractors and skidders from operating on State timber sales. The State commented that a trend toward more mechanized felling and harvesting equipment is evident; however, ground capabilities have remained largely unchanged.

Our Response: There are no State of Idaho lands being designated as critical habitat. We also acknowledge that, depending on the scale and timing of implementation, and equipment limitations, certain timber harvest treatments (partial cuts, thinning, etc.), may result in benign or perhaps beneficial effects to caribou habitat. However, as implemented historically, timber harvest practices (*e.g.,* large clear cuts) were not compatible with maintaining caribou habitat. To the extent these same types of timber harvests would be implemented today, such treatments would similarly be incompatible with the habitat requirements of caribou.

(16) *Comment:* The State and many other commenters have pointed out that recent annual surveys for the southern Selkirk Mountains population of woodland caribou have sighted zero to four caribou south of the United States-Canada border.

Our Response: See our response to Comment 1, which discusses the issue of occupancy at the time of listing. As noted previously, the southern Selkirk Mountains population of woodland caribou is a transboundary population, which moves between B.C., Canada and the United States. Although most of this population is known to inhabit Canada, individual caribou freely move between Canada and the United States. We are designating approximately 30,010 ac (12,145 ha) in one unit containing Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern Selkirk Mountains population of woodland caribou. This designation represents a reduction of approximately 345,552 ac (139,840 ha) from the critical habitat originally proposed for designation (76 FR 74018, November 30, 2011); and reflects a 1,000-ft (about 300-m) change in elevation from 4,000 ft (1,220 m) in the proposed rule, to an elevation at or above 5,000 ft (1,520 m) in the final critical habitat designation. Factors that were considered and influenced this change from the proposed rule included: (1) A revised determination of the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing based on peer review comments, Scott and Servheen (1984, 1985), as well as census monitoring documenting low numbers of individual caribou observed in the United States during those annual surveys, and (2) information and literature reporting the overall decline of the subspecies mountain caribou (*Rangifer tarandus caribou*) across its range, and in particular the decline of woodland caribou populations in the southern extent of their range, including the southern Selkirk Mountains population of woodland caribou.

(17) *Comment:* The State of Idaho indicated that the Service failed to take into account the best available science, and instead took a broad-brushed approach that if implemented as written, would carry significant economic consequences and ultimately hinder recovery efforts for the southern Selkirk Mountains population of woodland caribou in the region. The Kootenai Tribe of Idaho expressed a similar concern. The Idaho Department of Fish and Game (IDFG) did not support the proposed critical habitat designation being based on recovery zone boundaries, stating that much of the recovery zone would not be suitable caribou habitat for a century or more due to large stand-replacing fires in the 1960s, and to some extent, timber harvest. The Idaho Department of Lands (IDL) recommended that the approach and the area proposed for critical habitat be reevaluated and reduced significantly using data relevant to Idaho and with input from IDL and other State agencies.

Our Response: We have reviewed and evaluated all comments and information provided to the Service, including the State of Idaho's comments on the proposed rule and DEA. We have used that information to inform the final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou. Although not all of the information received through public comment is specifically identified or reflected in our response to comments in this final rule, it is part of the administrative record for this rulemaking, and has been given appropriate weight in the final designation. In accordance with section 4(b)(2) of the Act, we used the best scientific data available to inform this critical habitat designation. We also complied with the criteria, established procedures, and guidance based on the Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines.

In making this final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou, we reviewed information from many different sources, including articles in peer-reviewed journals, scientific status surveys and studies, unpublished materials, and experts' opinions or personal knowledge, to inform the final critical habitat designation. We requested comments or information from other concerned governmental agencies, the scientific community, industry, and other

interested parties concerning the proposed rule. Also, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. All of the comments and information we received were fully considered in finalizing this critical habitat designation for the southern Selkirk Mountains population of woodland caribou. The Summary of Changes From Proposed Rule section identifies the revisions being made in this final designation, which include removing areas that were similar to the southern Selkirk Mountains woodland caribou recovery zone boundaries, after considering recommendations from the State of Idaho (including IDFG), the Kootenai Tribe of Idaho, and peer reviewers. All the supporting materials used for the final rule, including literature cited and comments from the public and peer reviewers, are available for public inspection at the Web site: *http://www.regulations.gov.*

The State's comments with regard to economic impacts are addressed in the ''Comments Related to the Economic Analysis'' section below.

(18) *Comment:* The State of Idaho disagrees that the entire area proposed for critical habitat was occupied at the time of listing, when census data collected by the IDFG at the time of listing indicates that the southern Selkirk Mountains woodland caribou were utilizing habitat found in close proximity to the U.S. and Canadian border.

Our Response: Our final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou reflects our analysis of the best available scientific information, and peer review comments provided to us during public comment. See also our response to Comment 1 and the Summary of Changes from Proposed Rule section for a more robust discussion of occupancy at the time of listing and changes between the proposed and final critical habitat rules.

(19) *Comment:* The State of Idaho stated that critical habitat designation is not prudent at this time, because designation may lead to increased animosity towards the species and adequate protections are in place for the species and its habitat, including section 9 of the Act, which makes it unlawful for anyone to ''take'' southern Selkirk Mountains population of woodland caribou animals given its endangered status.

Our Response: We recognize and appreciate the conservation efforts that have been implemented for the southern Selkirk Mountains population of woodland caribou, and look forward to continuing this important work with our partners. However, to the maximum extent prudent, the designation of critical habitat is required when a species is listed as endangered or threatened under section 4(a)(3)(A)(i) of the Act. Critical habitat designation is a regulatory action that defines specific areas that are essential to the conservation of the species in accordance with the statutory definition. We find the contiguous habitat proposed in this final rule provides the Primary Constituent Elements (PCEs) essential for the conservation of caribou (see Criteria Used to Identify Critical Habitat for more information), and therefore we conclude that designation is beneficial to this species. We have reviewed the best available information and have determined that the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou would not be expected to increase the degree of threat by poaching, since increased education and awareness have made illegal poaching less of a threat than at the time of listing. Based on this information, we have determined that the designation of critical habitat is prudent. The fact that take prohibitions already exist under section 9 of the Act exist does not negate our requirement to designate critical habitat under section 4(a)(3) of the Act. Please refer to the Prudency Determination section in the proposed rule (76 FR 7401; November 30, 2011), for further information on our critical habitat prudency determination.

(20) *Comment:* The State of Idaho (IDFG) requested information on what additional, if any, management actions would be imposed in areas where critical habitat is designated, and how they would benefit the southern Selkirk Mountains population of woodland caribou.

Our Response: We do not foresee or anticipate substantive changes in the existing management of the southern Selkirk Mountains population of woodland caribou or its habitat, because Federal agencies that manage land within the critical habitat area already take extensive measures to protect caribou in these areas. We anticipate that these actions are likely to continue, and will continue to be subject to section 7 consultation as appropriate, regardless of critical habitat designation. See our response to Comment 21 for an additional discussion on the relationship between critical habitat and land use.

(21) *Comment:* The State of Idaho Department of Parks and Recreation (IDPR) is concerned that critical habitat management restrictions will have an effect on recreational activities, particularly snowmobiling, and motorized vehicle restrictions on roads and trails. The State commented that the Selkirk Mountains provide the only open terrain for snowmobiling in north Idaho. The State provided statistics showing a continual decline in motorized recreation opportunities in the Idaho Panhandle National Forest (IPNF), primarily restrictions associated with the grizzly bear recovery zone. Numerous public comments were received identifying similar concerns as the State.

Our Response: We have no information that would indicate that a possible outcome of a section 7 consultation with a Federal agency from designation of critical habitat would result in closures of public access, or result in restrictions to currently permissible activities such as recreation on Federal, State, county, or private lands. This is because designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Critical habitat designation also does not establish specific land management standards or prescriptions, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. The Service acknowledges that some seasonal limitations on motorized vehicle access to public lands have occurred to minimize disturbance to caribou, including a 1994 closure for a large area of the Selkirk Crest on the IPNF. This closure was put in place to protect caribou from impacts related to snowmobiling, in coordination with the IDFG. Additionally, we understand that a court-ordered injunction in 2006, which was modified in 2007, has restricted much of the area used by caribou within the Selkirk Crest from snowmobiling, until the IPNF develops a winter recreation strategy addressing the effects of snowmobiling upon the species. However, the critical habitat designation for the southern Selkirk Mountains population of woodland caribou has no bearing on either the 1994 closure or the 2006/2007 court-ordered injunction. The Service will work closely with the IPNF on the development of their winter recreation strategy, which will be subject to section 7 consultation with the Service.

Comments From Native American Tribes

(22) *Comment:* The Kalispel Tribe of Indians stated that the recovery of the southern Selkirk Mountains population of woodland caribou is of critical importance to the tribe. The tribe views this population as nearly extinct, and supports the development and execution of an ambitious plan in order to further recovery, including implementation of all tools available under the Act.

Our Response: We appreciate the significant interest and active involvement of the Kalispel Tribe of Indians in the recovery of the southern Selkirk Mountains population of woodland caribou. The designation of critical habitat is one tool the Service uses to recover species, and we look forward to continued work with the tribe toward that objective.

(23) *Comment:* The Kalispel Tribe of Indians stated that through critical habitat designation or an update of the recovery plan, the following issues must be addressed: (1) A full habitat analysis of the 375,562-acre recovery area must be performed in order to develop an adequate management plan; (2) based on current and predicted use areas, an active predator control plan must be implemented; and (3) a winter use plan for the recovery area must be developed, adopted, and strictly enforced. The tribe also stated that while they understand the importance of both balancing predator-prey relationships and the desire for accessing remote areas for recreation, neither disturbance is acceptable until caribou populations rebound. They stated that once the above three conditions are met, the herd should be augmented with new animals from Canada to bolster the vitality of the existing herd.

Our Response: We appreciate the tribe's comments on the proposed rule for the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou. We have reevaluated the best available data and the information provided in the 1994 Recovery Plan for the Selkirk Mountain Woodland Caribou, in light of the results of population surveys that have been conducted since the time of listing under the Act. As a result, we are designating 30,011 ac (12,145 ha) at an elevation of 5,000 ft (1,520 m) and above, on Federal lands in Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern Selkirk Mountains population of woodland caribou in the United States. This area represents our best assessment of the area occupied by the species at the time of listing in 1983, and that provides the PBFs essential to the conservation of the species in the United States. This area, when combined with areas secured and protected for the conservation of the species in British Columbia, (see ''Summary of Changes from Proposed Rule'') meets the recovery area requirements recommended in the 1994 recovery plan. The Service supports and agrees that effectively addressing the threats to the species, including predation and disturbance from recreational activities, will be essential to recover this species.

(24) *Comment:* In a letter to the Service on January 10, 2012, the Kootenai Tribe of Idaho stated that the proposed critical habitat area is in Kootenai Aboriginal Territory and holds special significance to the tribe. The Kootenai Tribe stated that they are pleased to be able to work with the Service on a government-to-government level in order to ensure protection and enhancement of the tribe's treaty resources, and look forward to consultation during and after the public comment period. The tribe urged the Service to consider community concerns about the proposed critical habitat designation and to extend the public comment period.

Our Response: We appreciate knowing the proposed critical habitat area holds special significance to the Kootenai Tribe of Idaho. We coordinated with the Kootenai Tribe throughout the critical habitat designation process, and look forward to continuing this cooperative relationship beyond the confines of this rulemaking. As noted earlier, the Service extended the public comment on several occasions to ensure our determination was based on the best available information and had the benefit of input from stakeholders on all sides of the issue. We also held numerous public meetings and conducted two public hearings to increase communication and address concerns.

(25) *Comment:* In a letter to the Service on May 15, 2012, the Kootenai Tribe of Idaho stated that the proposed critical habitat rule ''ignores the Federal government's commitments to consult meaningfully with the federally recognized tribes by attempting to limit such consultation to issues affecting Tribal lands.'' The tribe stated that the Service failed to acknowledge its responsibilities to protect and enhance the Kootenai Tribe's Treaty-reserved rights to fish at usual and accustomed areas, and hunt and gather on open and unclaimed lands, and protect cultural resources and access to traditional cultural properties and spiritual sites.

Our Response: The Service values its government-to-government relationship with the Kootenai Tribe of Idaho, and greatly appreciated the formal and informal exchange of information on the proposed critical habitat designation, on January 9, 2012, in Bonners Ferry, Idaho, and during a conference call on May 24, 2012, to clarify the concerns expressed in the tribe's letter. In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. This government-to-government relationship, as outlined in Secretarial Order 3206, dated June 5, 1997, establishes several important principles, including: (1) Working directly with tribes to promote healthy ecosystems; (2) recognizing that Indian lands are not subject to the same control as Federal public lands; (3) assisting tribes in developing and expanding tribal programs to promote healthy ecosystems; (4) supporting tribal measures that preclude the need for conservation restrictions; (5) being sensitive to Indian culture, religion, and spirituality; (6) exchanging information regarding tribal trust resources; and (7) striving to protect sensitive tribal information from disclosure.

(26) *Comment:* The Kootenai Tribe of Idaho questioned the prudency determination made by the Service because they believe the Service has not done the following: (1) Increased education and awareness regarding caribou among communities in north Idaho; (2) provided evidence that the threat of poaching may be reduced; or (3) addressed the second prudency criteria in order to demonstrate a benefit in designating critical habitat for the southern Selkirk Mountains population of woodland caribou. The Service also received questions regarding the prudency of the proposed critical habitat designation from the State of Idaho, private industry, and public commenters.

Our Response: See also our response to the State of Idaho in Comments 1 and 19. There is no requirement under the Act to demonstrate an increase in public education and awareness with respect to a prudency determination. However, we welcome all opportunities to further

public education and awareness, since engaging local communities in a collaborative way is critical to recovering imperiled species. The 5-year status review for the southern Selkirk Mountains population of woodland caribou states that, historically, over-hunting contributed to the decline of some caribou populations. However, there is no legal hunting season on the southern Selkirk Mountains population of woodland caribou in British Columbia or the United States, although poaching by ''mistaken identity'' shootings may occur. Based on the best available information, we do not expect poaching to significantly affect the southern Selkirk Mountains population of woodland caribou (USFWS 2008a, p 23).

(27) *Comment:* The Kootenai Tribe of Idaho commented that the recovery planning effort must be restarted and include all appropriate Tribal representatives, including Kootenai Tribe of Idaho representatives. In so doing, the sovereign governments responsible for caribou recovery can better understand the limiting factors impeding woodland caribou recovery and develop approaches for addressing those limiting factors in a holistic and ecosystem-based manner. They stated that the recovery effort must be transparent, and that communities affected, Kootenai and non-Kootenai, are entitled to know why the government is taking these actions, how such actions lead to achievable goals, and what it means for their livelihoods and ways of life. Numerous commenters stated that efforts to recover caribou have not been successful and questioned the need to continue recovery efforts. Others recommended that the Service consider revising the recovery plan, including the need to create additional populations to achieve recovery of the species.

Our Response: Although the status of the southern Selkirk Mountains population of woodland caribou recovery plan is beyond the scope of this rule, section 4(f)(4) of the Act states that the Secretary shall, prior to final approval of a new or revised recovery plan, provide public notice and an opportunity for public review and comment on such plan, and shall consider all information presented during the public comment period. Any successful recovery planning effort will require input and participation by appropriate Federal, State, Tribal, local, and private stakeholders, to identify measures needed to conserve any species listed under the Act.

(28) *Comment:* The Kootenai Tribe of Idaho recommended that: (1) The analysis of the IPNF suitable habitat should focus on critical caribou habitat essential to the conservation of the species; (2) reducing constraints on forest management and over-the-snow recreation should be factors considered; and (3) reduced constraints on forest management would assist not only in increasing community support for caribou recovery, but also allow for forest management to improve caribou habitat in areas not currently occupied by caribou, but which may support caribou populations in the future.

Our Response: We appreciate the Kootenai Tribe of Idaho's concerns and desire to achieve conservation and recovery of the southern Selkirk Mountains population of woodland caribou. With regard to recommendation (1), the proposed critical habitat rule was focused on caribou habitat essential to the conservation of the species, as required under section 3(5)(A) of the Act. With regard to recommendation (2), the designation of critical habitat does not establish specific land management standards or prescriptions, and does not automatically close areas to public access or currently permissible activities, such as recreation, or restrict all uses of land. However, as a result of critical habitat designation, Federal agencies are required under section 7(a)(2) of the Act to consult with the Service on Federal actions that may affect critical habitat. Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. During the consultation process, if we conclude that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to provide the Federal agency with a biological opinion describing reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of critical habitat. Such alternatives must be economically, as well as technologically, feasible (50 CFR 402.02).

However, regardless of critical habitat designation, Federal agencies already consult with the Service under section 7 of the Act because the southern Selkirk Mountains population of woodland caribou is a listed species under the Act. Federal agencies, such as the USFS, will continue to consult with us regardless of the designation of critical habitat, in order to ensure that their actions do not jeopardize the continued existence of caribou. In addition, Federal agencies that manage land within the proposed critical habitat already have ongoing management activities that consider the caribou, and various conservation efforts are in place to benefit the caribou. These plans have existed and will exist in the future with or without the designation of critical habitat, and the Service does not anticipate any additional ''constraints'' on management activities within National Forest lands. The Service acknowledges that some seasonal limitations on motorized vehicle access to public lands have occurred to minimize disturbance to caribou, including a 1994 closure for a large area of the Selkirk Crest in the IPNF. However, in the Service's analysis of the proposal, we stated that we do not foresee or anticipate that areas not currently closed due to the listing of caribou will be closed with the designation of critical habitat. This is because Federal agencies that manage land within the proposed critical habitat area already take extensive measures to protect the caribou within, and these actions have and will continue to be carried out and consulted on regardless of critical habitat designation. With regard to concern (3), the Service will work with Federal agencies through the section 7 consultation process, as well as other Federal, State, tribal, and private partners through the recovery planning process, to incorporate the best available science when developing appropriate management and recovery actions for caribou.

Comments From Environment Canada

(29) *Comment:* Environment Canada's Canadian Wildlife Service provided comments in support of the proposed critical habitat designation and advised us that they recently initiated the preparation of a draft recovery strategy for Woodland Caribou, Southern Mountain population. The draft recovery strategy covers many populations, including the transboundary southern Selkirk Mountains population of woodland caribou. The Canadian Wildlife Service stated that they recognize the detailed implementation planning and actions initiated by government agencies including the Service and that this information, along with additional information, will be considered in preparation of the Canadian recovery strategy. The Canadian Wildlife Service welcomes any contribution to the recovery strategy that the Service wishes to make.

Our Response: We appreciate the support provided by the Canadian Wildlife Service during this critical habitat designation process and during past caribou transplant and augmentation efforts. We also acknowledge the recent and ongoing

conservation actions undertaken by Canada, such as protecting Crown Lands from timber harvest within the Selkirk Mountains. We look forward to participating in the development of the draft recovery strategy as it pertains to the southern Selkirk Mountains population of woodland caribou.

Public Comments

(30) *Comment:* Several commenters requested that the Service hold public meetings within the communities affected by the proposed critical habitat designation and notify the media of these meetings. One commenter suggested that a public hearing be held in Bonners Ferry, ID. One organization suggested the Service should have held public meetings in additional locations close to the Selkirk Mountains, such as Sandpoint, ID, and Spokane, WA. One commenter requested that we engage with the Kootenai Tribe of Idaho and any other tribal/indigenous groups in the area affected by the proposed critical habitat designation.

Our Response: During the rulemaking process, the Service conducted numerous outreach efforts to be responsive to public requests for additional information, including the following:

- January 9, 2012: We met with the Kootenai Tribe of Idaho.
- May 24, 2012: We held a follow-up conference call with members of the tribe to discuss the proposed critical habitat rule.
- January 9, 2012: We presented information on the proposed critical habitat designation at a meeting of the Kootenai Valley Resource Initiative (KVRI) in Bonners Ferry, Boundary County, Idaho.
- January 24, 2012; February 28, 2012; March 26, 2012; June 24, 2012: We participated in public information and coordination meetings in Bonner County, Idaho, at the request of Bonner County Commissioners.
- April 19, 2012: We participated in a public information and coordination meeting in Boundary County, Idaho, at the request of Boundary County Commissioners.
- April 28, 2012: We held an informational session (an open house format for personal dialogue and question-and-answer period about the proposed rule) and a public hearing on April 28, 2012, in Bonners Ferry, Idaho, at the request of the Governor of Idaho and the Commissioners of Boundary County, Idaho. The public informational session and public hearing were announced in a press release and in the notice of availability published in the **Federal Register** on March 21, 2012 (77 FR 16512).
- June 16, 2012: We held an informational session and a public hearing in Coolin, Idaho, which was announced in a press release and in the notice of availability published in the **Federal Register** on May 31, 2012 (77 FR 32075).

The Service also notified the public about opportunities for input on the proposed rule through press releases and legal announcements in local newspapers. Information specific to informational sessions and public hearings in Boundary and Bonner Counties was published in the **Federal Register** and the following newspapers within 10 days of the meetings and public hearings: Newport Miner (WA); Spokesman Review (WA); Coeur d'Alene Press (ID); Idaho Statesman (ID); Lewiston Morning Tribune (ID); Bonner County Daily Bee (ID); Bonners Ferry Herald (ID); and Priest River Times (ID). Comment periods, instructions for comment submission, and proposed rule information occurred through press release notifications that reached Idaho and Washington media, citizens, elected officials, tribes, nongovernmental organizations, special interest groups, industry and business, academic institutions, Federal/State/local agencies and other interested parties. All formal public comment was recorded by a court reporter and is incorporated into the public record.

(31) *Comment:* Over the course of the rulemaking process and the three public comment periods, one commenter wrote to request that the public comment period be extended for an additional 6 months. One commenter requested an extension of the public comment period in order to allow time for the Service to educate the community on the proposed critical habitat rule and to allow Federal and State agencies and tribes time to review the proposed critical habitat rule.

Our Response: We requested written comments from the public on the proposed designation of critical habitat for the southern Selkirk Mountains population of woodland caribou during three comment periods, which were open for a total of 150 days. The first 60-day comment period, associated with the publication of the proposed critical habitat rule (76 FR 74018), opened on November 30, 2011, and closed on January 30, 2012. We reopened the comment period for 60 days on March 12, 2012 (77 FR 16512). During the second comment period, we held a public hearing in Bonners Ferry, Idaho, on April 28, 2012.

We also requested comments on the proposed critical habitat designation and associated DEA during a third comment period that opened May 31, 2012, and closed on July 2, 2012 (77 FR 32075). During this comment period, we also held a public hearing on June 16, 2012, in Coolin, Idaho. We believe we have provided adequate time for the public to comment on the proposed rule and associated DEA, to ensure our final determination is based on the best available information.

(32) *Comment:* Several commenters suggested that the public, State governments, and local communities be consulted early in the rulemaking process, as they are key stakeholders in the process. One commenter noted that it is important for proposed critical habitat rules to have public support in order to build trust between the Federal Government and the public. Another commenter expressed concern that the Service had not coordinated with, nor shared the proposed critical habitat rule with, the State of Idaho and Department of Fish and Game prior to publication in the **Federal Register**.

Our Response: The Service is committed to meaningful coordination with all of our partners when it comes to our activities. We also take seriously our responsibility to coordinate with other local, State, and tribal governments and the general public. In regard to this commitment, the Service follows specific policies and procedures to inform the public and all governmental entities when we are considering actions such as listing endangered or threatened species, designating critical habitat, or developing recovery plans. These procedures frequently include opportunities for open meetings or hearings beyond the general notices and letters we send out. While developing the proposed rule, the Service reached out to several Federal and State agency experts and scientists to obtain the most current and best available information for inclusion in the proposed rule. Where agencies were able to respond to these efforts in a timely manner, the information was evaluated, and relevant information was included in the proposed rule.

(33) *Comment:* Commenters stated that the southern Selkirk Mountains population of woodland caribou represents a very small percentage of the overall North American caribou population, that caribou are at home on open tundra in Canada, Alaska, and Greenland (not in Idaho), and questioned the need for the proposed critical habitat in Idaho. Commenters also stated that tens of thousands of

caribou roam Canada and Alaska, which represent the caribou's preferred habitat. One commenter requested clarification regarding the difference between the southern Selkirk Mountains population of woodland caribou and the caribou of the Brooks Range in Alaska.

Our Response: All caribou in the world are a single species (*Rangifer tarandus*); however, there are seven subspecies of caribou. The subspecies found in Alaska, including within the Brooks Mountain range, is the barren-ground subspecies (*Rangifer tarandus granti*), which resides in open tundra and mountainous areas. The southern Selkirk Mountains population of woodland caribou belongs to the subspecies *Rangifer tarandus caribou.* For additional information on woodland caribou, please see the Background section of the 2008 5-Year Review, and for additional information on the southern Selkirk Mountains population of woodland caribou, please see the Background section of the proposed rule published November 30, 2011 (76 FR 74018). Both of these references are available on *http://www.regulations.gov,* or by request from the Idaho Fish and Wildlife Office (see **ADDRESSES**).

(34) *Comment:* Bonner County, Idaho, questioned the need for designating critical habitat for the southern Selkirk Mountains population of woodland caribou, which they believe is ''a direct result of the 1984 listing rule which has been shown to be incorrect.'' The County recommended that if the Service does move forward with a critical habitat rule, the designation should be reevaluated and reduced significantly, using data relevant to north Idaho, in consultation and coordination with the IDL, IDFG, and Bonner County Commissioners.

Our Response: The meaning behind the County's reference to the 1984 listing rule being incorrect is not entirely clear; however, the designation of critical habitat is required when a species is listed as endangered or threatened under section 4(a)(3)(A)(i) of the Act, to the maximum extent it is prudent and determinable. See our response to comment 19 for additional information regarding our prudency determination. This final critical habitat designation fully considers all comments received, which includes scientific information from peer reviewers and the IDFG. Revisions from the proposed critical habitat designation are described in the Summary of Changes from Proposed Rule section.

(35) *Comment:* The Boundary County Commissioners commented that the proposed critical habitat did not contain the PBFs essential to the conservation of the southern Selkirk Mountains population of woodland caribou. The Commissioners also commented that the Service should focus its critical habitat designation on the area of Little Snowy Top Mountain, where all sightings of nontransplanted southern Selkirk Mountains woodland caribou have occurred.

Our Response: The Service based our final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou on the best available scientific information, including comments and information received from peer reviewers, Federal and State agencies, the Kootenai Tribe of Idaho, and public comments received during the three public comment periods. Based on this information, we are designating 30,010 ac (12,145 ha) of critical habitat for the southern Selkirk Mountains population of woodland caribou in the United States that was known to be occupied at the time of listing in 1983 and 1984. All of the areas designated in this final rule contain the PBFs and habitat characteristics essential to conserve the species, for the reasons explained in the ''*Physical or Biological Features*'' section below.

(36) *Comment:* Bonner County, Idaho stated that ''the proposed listing also raises significant concerns about possible Federal nexus situations whereby the County will likely be prohibited from winter snowmobile trail grooming. At present, Bonner County must obtain permission from both the USFS and IDL. Federal nexus situations may also include future requirements to obtain permits for other as yet unknown nexus situations created by further Federal mandates.'' The County also believes ''the proposed listing would significantly impact Bonner County's ability to manage over 400 miles of groomed snowmobile trails used by visitors and residents alike.''

Our Response: Although the County's comment appears to be focused on the ''proposed listing,'' we are assuming they were referring to the proposed critical habitat designation instead. However, there are no Bonner County lands being designated as critical habitat for the southern Selkirk Mountains population of woodland caribou in this final rule.

(37) *Comment:* We received extensive public comments suggesting that designation of critical habitat will result in either a complete closure of the designated area or extensive restrictions to human access within the designated area for recreational purposes (including, but not limited to, snowmobiling, hiking, picnicking, and camping). We received many comment letters both in support of and in opposition to the critical habitat designation based on the assumption that this designation will require land closures and access restrictions. Many supporters noted that there are many opportunities to recreate outside of southern Selkirk Mountains population of woodland caribou habitat, with particular emphasis on snowmobiles. Of the commenters in opposition, some expressed concern that restrictions and closures would have a significant impact on the economy. Other commenters expressed opposition to the proposal because they believe there are few, if any, caribou in the United States, and implementing closures or restrictions on uses is not justified. Finally, a few commenters stated that snowmobiles do not present a real threat to caribou, and therefore areas proposed for designation of critical habitat should not be closed, or have restrictions placed on access.

Our Response: We have no information that would indicate this designation of critical habitat will result in the closure of areas to public access or result in restrictions to currently permissible activities such as recreation on Federal, State, county, or private lands, as is more fully discussed in our response to comment 21. There is also no information that would indicate the designation would result in significant economic impacts, as is discussed in the *Comments Related to Economics and the Draft Economic Analysis* section.

(38) *Comment:* Several commenters objected to the southern Selkirk Mountains population of woodland caribou herd being identified as approximately 36 animals in the proposed rule, stating that few animals have been documented in the United States in recent years. One commenter expressed confusion between the population number provided by the Service (36 animals), and population numbers provided in various media outlets (40 to 60 animals). Several commenters stated they spent considerable time in the areas proposed as critical habitat and have never seen a caribou. One commenter stated that since the Service did not present recent population numbers of the southern Selkirk Mountains population of woodland caribou in the United States in the proposed critical habitat rule, there is no scientific support for a designation of critical habitat.

Our Response: The southern Selkirk Mountains population of woodland caribou is a transboundary population, which moves between British Columbia, Canada and the United States. Although most of this population is known to

inhabit Canada, individual caribou freely move between Canada and the United States. For example, in the last 3 years, the winter census results for southern Selkirk Mountains population of woodland caribou have gone from 43 total caribou with 2 individuals observed in the United States in 2010, to 36 total caribou with none observed in the United States in 2011. Twenty seven caribou were counted in the 2012 winter survey, with 4 of those individuals observed in the United States (Woodland Caribou Census Report 2012, p. 5).

(39) *Comment:* Some commenters opposed critical habitat designation for the southern Selkirk Mountains population of woodland caribou, as they believe the population is not viable. Other commenters suggested that the viability of this population is fragile and that, as a result, the entire proposed area should be designated as critical habitat.

Our Response: The purpose of the Act, in part, is to provide a means to conserve listed species and the ecosystems upon which they depend. Once a species is listed under the Act, we are required to implement conservation actions toward its recovery. The designation of critical habitat is a statutory conservation requirement under the Act, unless designation would not be beneficial to the species. For the southern Selkirk Mountains population of woodland caribou, we have determined that the designation of critical habitat would be beneficial, as has been previously discussed. We have determined that much of the area proposed as critical habitat is not occupied or essential to the conservation of the southern Selkirk Mountains population of woodland caribou. This is more fully discussed in the Summary of Changes From Proposed Rule section.

(40) *Comment:* Several commenters opposed critical habitat designation for the southern Selkirk Mountains population of caribou, as the individuals of this herd in the United States are transplanted individuals, and not native U.S. caribou. Additional comments stated that the transplanted animals did not want to remain in the United States and migrated back to Canada. One commenter indicated the Service should not use telemetry data from transplanted caribou in determining the caribou recovery areas, as these animals did not represent true members of the southern Selkirk Mountains population of woodland caribou.

Our Response: Under section 3(5)(A) of the Act, a critical habitat designation may include the geographical areas occupied by the species at the time of listing on which are found the physical and biological features essential to the conservation of the species and which may require special management considerations or protection, as well as areas outside the geographical area occupied by the species at the time of listing that are determined to be essential for the conservation of the species. This final critical habitat designation: (1) Is based on the best available scientific information (see our response to Comment 1); (2) is within the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing; (3) identifies those areas that are essential to the conservation of the species; and (4) will advance important conservation efforts with our partners toward recovering this species.

(41) *Comment:* One commenter recommended that the Service not exclude any areas from critical habitat in the final rule. One organization noted that it accepted the Service's decision not to include the Schweitzer Mountain Resort along the southern boundary on social grounds, given the difficulty of managing there.

Our Response: Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. The Service did not propose to exclude any areas in the proposed rule, and the Secretary is not exercising his discretion to exclude any areas from critical habitat in the final rule. The Schweitzer Mountain Resort was not proposed for designation as critical habitat (which is not the same as excluding from designation under section 4(b)(2) provisions of the Act), because it is a highly developed recreational destination and does not contain any of the identified PBFs essential to supporting the conservation of this species.

(42) *Comment:* One commenter urged the Service to exclude any areas from critical habitat below 4,000 ft (1,219 m) in elevation due to economic impacts. The commenter also stated, ''an exclusion of this nature would provide clear guidance to Federal agencies when road access agreements are being considered below 4,000 ft (1,219 m) in elevation and when accessing private lands that do not contain critical habitat at higher elevations.''

Our Response: No areas were excluded from critical habitat based on economic impacts; however, the final designation includes areas at 5,000 ft (1,520 m) and higher in elevation. The 5,000 ft (1,520 m) elevation will be the elevation baseline considered by the Federal agencies for purposes of section 7 consultation when evaluating road access agreements. Maps identifying the specific location of these areas are available on the Idaho Fish and Wildlife Service Web page, *http://www.fws.gov/idaho,* or from that office (see **ADDRESSES**).

(43) *Comment:* Many comments suggested that the Service should increase the proposed designated critical habitat to include: (1) The entire recovery area identified in the 1994 Recovery Plan (443,000 ac) (179,276 ha); (2) areas currently unoccupied, as they may become more important as the southern Selkirk Mountains population of woodland caribou recovers; (3) large areas required to maintain connectivity between essential habitats, especially in light of the impacts of climate change; or (4) areas of historical occupation, such as additional areas in Washington and Idaho, as well as in Montana. Some commenters indicated concern that the critical habitat area as proposed would not support a fully recovered population of southern Selkirk Mountains woodland caribou. One commenter urged the Service to consider including the Priority Areas 1, 2, and 3 as outlined in Kinley and Apps (2007) in the critical habitat designation.

Our Response: See Section ''*Criteria Used To Identify Critical Habitat*'' below for a discussion of our rationale for constructing the critical habitat unit, including the biological needs of the species, seasonal habitat requirements, and the relationship of the essential PBFs and primary constituent elements to the conservation needs of the southern Selkirk Mountains population of woodland caribou. The Service used the best available scientific information on the southern Selkirk Mountains population of woodland caribou seasonal use of habitat and movement between habitats to quantify the areas we are designating as critical habitat, including the Priority 1, 2, and 3 areas identified in the Kinley and Apps (2007) model. If additional data become available in the future, the Secretary can revise the designation under the

authority of section 4(a)(3)(A)(ii) of the Act, as appropriate.

(44) *Comment:* Many comments suggested that the proposed critical habitat designation was too large, and that either specific areas should be removed from the final designation, or the Service should not designate any critical habitat for the southern Selkirk Mountains population of woodland caribou because: (1) Fires have eliminated old-growth forests in the historical range of the caribou in the United States, and no suitable habitat exists; (2) the proposed critical habitat areas do not contain the physical or biological features necessary for the survival of the southern Selkirk Mountains population of woodland caribou; or (3) recent studies indicate the majority of the range and movements of the southern Selkirk Mountains population of woodland caribou occurs at or above 5,500 ft (1,676 m).

Our Response: We have used the best scientific data available to inform our final determination of critical habitat for the southern Selkirk Mountains population of woodland caribou, as is required under section 4(b)(2) of the Act. All areas designated as critical habitat contain one or more of the PCEs essential to the conservation of the species. See our response to comment 43 for additional information.

(45) *Comment:* Several commenters indicated that the United States comprises only the southernmost portion of the range of the southern Selkirk Mountains population of woodland caribou, and this habitat is unsuitable to support the caribou population. Therefore, they believe critical habitat should not be designated in the United States. One commenter stated that protecting species that have their full range within the United States should be the focus of the Service's efforts.

Our Response: The critical habitat being designated in this final rule represents the geographical areas essential to the conservation of the southern Selkirk Mountains population of woodland caribou, within the area known to be occupied at the time of listing. The biological basis for this determination is more fully explained in the Critical Habitat section, below.

(46) *Comment:* One commenter indicated that the Service cannot rely on a map showing individual caribou observations, as a map showing observed locations is not relevant when individual animal tracking is not utilized (one animal can create many or most of the location marks over a period of many years). Another commenter stated that data points used to identify caribou locations should only be from the native southern Selkirk Mountains population of woodland caribou, not transplanted animals.

Our Response: We used the best available information, including reports, peer-reviewed literature, and other data, to make our final determination on the area to be designated for critical habitat for the southern Selkirk Mountains population of woodland caribou. We have provided a thorough description of our analysis in the *Criteria Used to Identify Critical Habitat* section in the final rule. Telemetry data from transplanted animals was not used as a basis for establishing the geographical area occupied at the time of listing in the final rule. See our response to Comment 1 for additional information regarding occupancy data used to establish the geographic area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing.

(47) *Comment:* Several commenters noted that the draft land management plan for the IPNF proposes area designations, such as wilderness, primitive, and backcountry, which have allowable activities within these designations that are likely not compatible with caribou recovery and caribou critical habitat goals. For example, backcountry and primitive designations may allow motorized winter recreation. The potential increase in wilderness designation within the draft land management plans may have an impact on the potential losses of critical habitat due to wildfire. Suppression of wildfires within wilderness is generally a low priority nationally. Potential wilderness designations within caribou recovery and critical habitat should include measures for aggressive fire suppression to prevent losses of caribou habitat within wilderness.

Our Response: The approval and implementation of land management plans on National Forest Service lands are Federal actions subject to section 7 consultation under the Act by the land management agency. The Service is not a land management agency in any of the areas being designated as critical habitat. The Act prohibits Federal agencies from carrying out actions that would destroy or adversely modify critical habitat. With regard to the above activities, it is the responsibility of the Federal land management agency to consider the effects of its actions on designated critical habitat. For purposes of critical habitat, section 7 consultation is only triggered when the Federal agency determines that its action may affect critical habitat. Actions that (1) may affect, but are not likely to adversely affect, or (2) result in wholly beneficial effects to critical habitat, are evaluated through informal consultation with the Service. It is the responsibility of Federal agencies to request formal section 7 consultation for actions that may affect, and are likely to adversely affect critical habitat. During the consultation process, if we conclude that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to provide the Federal agency with a biological opinion describing reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of critical habitat. Such alternatives must be economically, as well as technologically, feasible (50 CFR 402.02). See the Effects of Critical Habitat Designation section for additional information on section 7 requirements as they relate to this final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou.

(48) *Comment:* Several commenters indicated that the designation of critical habitat would prevent certain land uses and land use management, specifically timber harvesting and wildfire suppression. One commenter expressed concern that curtailing timber management within the critical habitat area would result in greater fuel loads and increased risk of catastrophic fires, which in turn could threaten the southern Selkirk Mountains population of woodland caribou. The commenter stated that there are silvicultural practices that could benefit the caribou and its habitat over the long term.

Our Response: Please refer to our response to comment 13 regarding fire and timber management. We acknowledge that natural wildfire plays an important role in maintaining a mosaic of forest successional stages that provides habitat for a variety of species endemic to this ecosystem, and that fire suppression can alter vegetative mosaics and species composition. Therefore, in this final rule we have incorporated language addressing the importance of developing and implementing a wildland fire use plan to allow for the appropriate non-suppression of naturally ignited fires, and the implementation of a prescribed fire program.

(49) *Comment:* At least one commenter alleged, ''Federal land and resource agencies routinely act without prior consultation with the U.S. Border Patrol (USBP), and without regard to National Security implications.''

Our Response: We disagree with the comment with respect to the Service. As we developed this final rule, we coordinated with the USBP through formal and informal notices, stakeholder calls, public meetings, presentations at Spokane Sector Border Management Task Force meetings, and interagency meetings. The purposes of this interaction were to share and clarify information regarding the proposed rule and to seek feedback on any concerns. Although we did not receive any written comments from the USBP in response to the proposed rule, we have fully considered all information provided by the agency during our various interactions in this final rule. See our response to comment 51 with regard to USBP activities for additional information.

(50) *Comment:* A few commenters were concerned that critical habitat designation for the southern Selkirk Mountains population of woodland caribou would affect USBP operations.

Our Response: Throughout the critical habitat designation process, there was an erroneous public perception that designating critical habitat equated to a closure of the designated area. The Service does not manage any of the lands being designated as critical habitat. Further, the designation of critical habitat does not affect land ownership, or establish any closures, refuges, wilderness areas, reserves, preserves, or restrictions on use or access to the designated areas. The designation of critical habitat for the southern Selkirk Mountains population of woodland caribou would not restrict, regulate, or determine the ability of the USBP to operate in close proximity to the border. Within caribou habitat, the USBP operates, for the most part, on National Forest System lands and its existing roads and trails. The March 31, 2006, Memorandum of Understanding (MOU) between the Secretary of the Interior, Secretary of Homeland Security, and Secretary of Agriculture Regarding Cooperative National Security and Counterterrorism Efforts on Federal Lands Along the U.S. Borders commits the agencies to preventing illegal entry into the United States, protecting Federal lands and natural and cultural resources, and where possible, preventing adverse impacts associated with illegal entry by cross-border-violators (CBVs). The intent of the MOU is to provide consistent goals, principles, and guidance related to border security, such as law enforcement operations; tactical infrastructure installation; utilization of roads; minimization and/or prevention of significant impact on or impairment of natural and cultural resources; implementation of the Wilderness Act, Endangered Species Act, and other related environmental laws, regulation, and policies across land management agencies; and provide for coordination and sharing information on threat assessments and other risks, plans for infrastructure and technology improvements on Federal lands, and operational and law enforcement staffing changes. Through this 2006 MOU, and local groups such as the Spokane Sector Borderlands Management Task Force, the three departments are cooperating to understand, respect, and accomplish their respective missions. The MOU includes provisions for Customs and Border Protection (CBP) vehicle motor operations on existing public and administrative roads and/or trails and in areas previously designated by the land management agency for off-road vehicle use at any time, provided that such use is consistent with presently authorized public or administrative use. It also includes provisions for CBP requests for access to additional Federal lands (*e.g.,* areas not previously designated by the land management agency for off-road use) for such purposes as routine patrols, nonemergency operational access, and establishment of temporary camps or other operational activities. The MOU states: ''Nothing in this MOU is intended to prevent CBP–BP agents from exercising existing exigent/emergency authorities to access lands, including authority to conduct motorized off-road pursuit of suspected CBVs at any time, including in areas designated or recommended as wilderness, or in wilderness study areas when, in their professional judgment based on articulated facts, there is a specific exigency/emergency involving human life, health, safety of persons within the area, or posing a threat to national security, and they conclude that such motorized off-road pursuit is reasonably expected to result in the apprehension of the suspected CBVs.'' Accordingly, there is no verifiable information that would suggest the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou would affect CBP operations.

(51) *Comment:* A commenter stated that the Service does not understand that a Federal nexus exists on virtually every timber harvest on all land ownerships, be they Federal, State, or private. They believe that there are many places where the Federal Government has rules and regulations affecting timber harvest on all forested lands, and that any timber sale could be stopped within the area designated as critical habitat.

Our Response: In the 29 years since the southern Selkirk Mountains population of woodland caribou was emergency listed in 1983 (48 FR 1722), the States of Washington and Idaho have not been required to consult with the Service, as there has not been an activity with a Federal nexus (*e.g.,* a Federal permit such as a Corp of Engineers (COE) 404 permit, or the use of Federal funds). However, even if there was a Federal nexus, the timber harvest would not necessarily be prohibited. Federal action agencies must evaluate the potential effects of each action on its own merits, carrying out actions that would destroy or adversely modify critical habitat. A Federal action (*e.g.,* winter recreation, energy transmission, mining, or road construction) that is not likely to cause destruction or adverse modification of caribou habitat may not be materially affected by a critical habitat designation. If a Federal action would result in destruction or adverse modification of caribou habitat, the Service would suggest reasonable and prudent alternatives to avoid the destruction or adverse modification of critical habitat. As stated earlier, during the section 7 consultation process, if we conclude that a proposed action is likely to result in the destruction or adverse modification of critical habitat, we are required to provide the Federal agency with a biological opinion describing reasonable and prudent alternatives to the action that would avoid the destruction or adverse modification of critical habitat. Such alternatives must be economically, as well as technologically, feasible (50 CFR 402.02).

(52) *Comment:* A commenter stated the proposed rule fails to include a discussion of the types of ''special management considerations or protections'' potentially needed that differ from current and recent uses. Therefore, the threats to habitat cannot be adequately addressed in the context of section 7 consultation or other measures. This is a reason for a more inclusive extent of critical habitat than what is proposed.

Our Response: The proposed rule identifies the types of Federal actions that may affect critical habitat, and should result in section 7 consultation (see *Application of the ''Adverse Modification''* Standard), (76 FR 74030; November 30, 2011). For these types of actions, any management actions necessary for a particular Federal action would be case-specific and depend on

the outcome of the section 7 consultation process. Within the area designated as critical habitat for the southern Selkirk Mountains population of woodland caribou, the Service's 1994 Recovery Plan, and the CNF and IPNF LRMPs contain standards and guidelines pertaining to the management of the species and its habitat. See the Special *Management Considerations or Protections* section below for additional information.

(53) *Comment:* Several commenters fear that, given the critical habitat designation is in response to a court-ordered settlement agreement in a case initiated by environmental organizations, the true intent of these environmental organizations is to close more public lands to access, and the designation of critical habitat is one way of accomplishing this.

Our Response: The Service has no control over the future actions of environmental groups, recreational organizations, development or timber interests, governmental organizations, or others, with regard to their future responses to the final critical habitat designation. As stated earlier, throughout the critical habitat designation process, there was an erroneous public perception that designating critical habitat equated to a closure of the areas being designated. However, the designation of critical habitat does not affect land ownership, or establish any closures, refuges, wilderness areas, reserves, preserves, or restrictions on use or access to the designated areas. It does require that Federal agencies consult with us under section 7 of the Act if their actions may affect critical habitat. See our response to Comment 51 which discusses our section 7 consultation history since the southern Selkirk Mountains population of woodland caribou was listed under the Act.

(54) *Comment:* One commenter asserted that since designation of critical habitat can potentially have significant impacts upon the environment, economy, and quality of life of people within the affected region, preparation of an Environmental Impact Statement (EIS) is warranted.

Our Response: As stated in the proposed rule (76 FR 74033), outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Act. We published a notice outlining our reasons in the **Federal Register** on October 25, 1983 (48 FR 49244). The U.S. Court of Appeals upheld this position for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (Ninth Cir. 1995), cert. denied 516 U.S. 1042 (1966)).

(55) *Comment:* Two commenters, including the City of Bonners Ferry, commented that part of the watersheds for the City of Bonners Ferry's primary source of drinking water (Myrtle Creek and Snow Creek drainages) are within the proposed caribou critical habitat designation. These commenters oppose any further regulations or restrictions placed on the USFS, or any other entity, that would adversely affect the management of those watersheds for providing the City of Bonners Ferry's drinking water. One commenter recommended that consideration be given for removal of the Myrtle and Snow Creek watersheds from critical habitat designation, including areas beyond the watersheds, to control pollution, infestation, or wildfires.

Our Response: Although the watershed for the City of Bonners Ferry is not included in the final critical habitat designation for the southern Selkirk Mountains population of woodland caribou, the Service appreciates and is sensitive to the City of Bonners Ferry's desire to protect the Myrtle and Snow Creek drainages, which are the primary sources of drinking water for the city. Federal agencies have been coordinating with the Service on the management of caribou and its habitat since this population was emergency listed in 1983. We recognize that uncontrolled wildfires can have devastating effects on the water quality of watersheds. Hence, the Service participated in the development of the Myrtle Creek Healthy Forest Restoration Project, which was designed in 2007 to reduce the wildfire risk in the Myrtle Creek watershed through management of hazardous fuels. Finally, we are committed to working with the USFS to develop a strategy that provides direction to the USFS for the use of natural and unplanned fires, and have incorporated language into the final rule addressing this issue.

(56) *Comment:* Many commenters suggested that the Service should increase the proposed critical habitat designation due to climate change, while others commented that the proposed critical habitat designation should be decreased or not designated due to climate change predictions.

Our Response: We acknowledge that climate change could change the suitability of southern Selkirk Mountains population of woodland caribou habitat in the future. However, we are required to designate critical habitat based upon the best available scientific data at the time that we finalize the designation. At this point in time, reliable projections of future climate change in caribou habitat are not available. We acknowledge that higher elevation habitat is likely to become increasingly important in the face of potential climate changes. In this regard, designated critical habitat includes high elevation habitat and migratory corridors between suitable habitat areas in the United States and Canada. We also find the best scientific information available suggests that the range of the southern Selkirk Mountains population of woodland caribou has largely shifted northward, and the vast majority of the areas that provide the essential PBFs for this population of woodland caribou now occur within Canada. See *Criteria Used To Identify Critical Habitat* below for a discussion of our rationale for constructing the critical habitat unit. Critical habitat can be revised under section 4(a)(3)(A)(ii) of the Act as appropriate, as additional scientific data on climate change or other significant information becomes available.

(57) *Comment:* Some commenters suggested that, in the face of climate change, the threat from predation would increase and that, because of this increased threat, there was no need to designate critical habitat.

Our Response: We acknowledge that climate change may have presently unknown effects on predation and other threats in the future. Utzig (2005 p. 10) states that it is impossible to predict specific changes to the ecosystems that contribute to caribou mortality (*i.e.,* predation and other causes) due to climate change. However, the Service has a statutory obligation under section 4(b)(2) of the Act to designate critical habitat, in part, based on the best available scientific data available. Since there is no scientific information that would inform a reliable projection regarding the interaction between climate change and predation, we are unable to factor the concern raised into the final critical habitat designation.

(58) *Comment:* During a public hearing, one commenter suggested that suitable habitat did not exist in the Selkirk Mountains due to changes in vegetation reflected in the U.S. Department of Agriculture's (USDA) Plant Hardiness Zone Maps. The commenter stated the Selkirk Mountains should not be designated as critical habitat, based on this information.

Our Response: The USDA Plant Hardiness Zone Maps are based on average annual winter temperatures, and reflect standards by which

gardeners and growers can determine which plants are most likely to thrive in a given location. However, information provided by a Forest Ecologist/Forest Silviculturist with the IPNF (Zack 2012, pers. comm.), suggests that native vegetation species generally have adaptive tolerance to a range of climatic conditions, and that in the last few decades, the IPNF has not observed any shifts in boundaries for habitat type groups (*e.g.,* subalpine fir/Engelmann spruce, and western hemlock/western red cedar climax forests). Habitat types are land classifications based on potential natural vegetation defined as ''all those land areas potentially capable of supporting similar plant communities at climax.'' (Cooper, Neiman, Roberts. 1991. Forest Habitat Types of Northern Idaho: A second Approximation) (Zack 2012, pers. comm.). Similar to the IPNF, we do not anticipate any shifts of vegetation boundaries have occurred on the CNF with respect to habitat type groups (*e.g.,* subalpine fir/Engelmann spruce, and western hemlock/western red cedar climax forests) due to the fact that the CNF is within the same mountain range as the IPNF and containing similar elevations, soils, geology, precipitation patterns, etc., as the IPNF.

Federal Agency Comments

(59) *Comment:* The U.S. Forest Service (USFS) Pacific Northwest Region commented that: (1) The proposed critical habitat rule cautions about management activities that reduce and fragment areas in a manner that creates a patchwork of different age classes or prevents young forests from achieving old-growth habitat characteristics; (2) part of the concern is that this patchwork draws other ungulates within proximity of caribou; and (3) this consequently brings in predators such as mountain lions and wolves. They also commented that within the cedar/hemlock and subalpine fir/spruce zones, there are instances of inclusions of lodgepole pine or other seral tree cover types, and that removing these seral trees through timber harvest or fire, and managing for shade-tolerant understory, could hasten the conversion of these sites to suitable caribou habitat. They requested that the Service characterize the degree to which created openings may be considered as management tools to maintain or promote suitable caribou habitat in such cases.

Our Response: We are unable to identify a characteristic opening size within caribou habitat that would always be compatible with, or promote the development of, suitable caribou habitat. As the USFS suggests, created openings may facilitate the retention or development of old-growth characteristics suitable for use by caribou. However, the effective sizes of these openings would best be determined on a site-specific basis, taking into consideration the existing forested ecological conditions and the natural disturbance history of the area. We will continue to work with the USFS to gain more information regarding these management options and their scientific applicability within caribou critical habitat areas.

(60) *Comment:* The USFS commented that the proposed rule notes the IPNF and the CNF have vegetation management direction in existing Forest Plans, which contribute to the protection of the essential PBFs by analyzing timber management actions on a site-specific basis to consider impacts to caribou habitat. They commented that Forest Plan direction allows the USFS to treat areas to help trend capable habitat into suitable habitat for caribou, but the Application of the Adverse Modification Standard section in the proposed rule indicates that many silvicultural activities used to help trend capable habitat toward suitable habitat (*e.g.,* thinning, prescribed fire, timber harvest) would adversely modify critical habitat. The USFS suggested adding a statement to the Application of the Adverse Modification Standard section clarifying that stands that are not currently suitable (*i.e.,* have a preponderance of less desirable cover types such as lodgepole pine), and are not likely to attain suitability absent a stand-replacing disturbance event, may need treatment to facilitate movement towards preferred cover types (such as subalpine fir).

Our Response: We acknowledge that timber harvest in some situations may be used to achieve or promote a more rapid attainment of tree species composition or certain structural characteristics (*e.g.,* old growth), and that the effects of silvicultural practices (*e.g.,* commercial harvests, thinning, etc.) to critical habitat are scale-dependent. We do not anticipate that either the IPNF or CNF would propose a timber harvest at the scale that would result in the adverse modification of critical habitat. For a proposed Federal action to result in adverse modification (*i.e.,* substantially reduce the conservation value of the critical habitat area to an extent that would affect its ability to serve its intended recovery role), it would likely have to significantly alter large areas of high-elevation mature to old-growth western hemlock/western red cedar climax forest, or subalpine fir/Engelmann spruce climax forest, or significantly restrict caribou movement through such areas. The scale of such a project would be such that it would essentially affect the landscape, versus a forest stand or multiple forest stands. As stated previously, Federal agencies have been consulting with the Service on caribou, within the area designated as critical habitat, since the species was emergency listed in 1983. Many of these consultations involved timber harvest, and none of the consultations involving timber harvest resulted in jeopardy determinations. Therefore, in light of our history of consultations with Federal land management agencies, we find that it is unlikely that a Federal agency would propose a timber harvest project at a scale that would potentially represent jeopardy to the species and/or adverse modification of designated critical habitat. Nonetheless, should this occur, to avoid adverse modification we would most likely recommend reducing the scale of impacts to mature and old growth stands within western hemlock/western red cedar and subalpine fir/Engelmann spruce forests. If impacts are temporary or seasonal in nature and avoidance is not possible, the Service would most likely recommend temporary, seasonal timing constraints be employed to avoid disruption of caribou movement and/or seasonal habitat use.

(61) *Comment:* The IPNF stated that blanket direction to always take rapid response measures whenever wildfire occurs in the area may be detrimental to other species (*e.g.,* grizzly bear, lynx, and whitebark pine), and is not ecologically sustainable. They suggested a better course of action would be to rapidly analyze the appropriate actions to take (or perhaps not take), which considers the needs of all resources and species.

Our Response: We agree that natural wildfire plays an important role in maintaining a mosaic of forest successional stages that provides habitat for a variety of species endemic to this ecosystem, and that fire suppression can alter vegetative mosaics and species composition. Therefore, in this final rule we have incorporated language addressing the importance of developing and implementing a wildland fire use plan to allow for the appropriate nonsuppression of naturally ignited fires, and the implementation of a prescribed fire program. Such a program would be prudent to implement across all IPNF ownership, including within the area designated as critical habitat for caribou.

(62) *Comment:* The IPNF commented that language in the proposed rule pertaining to ''little to no disturbance'' within designated caribou critical habitat should be clarified. The IPNF is concerned over how this language may affect recreational activities such as snowmobiling and hiking, as well as U.S. Customs and Border activities.

Our Response: One of the survival strategies of caribou is to spread out over large areas at high elevations, thereby reducing their density and, thus, susceptibility to predation (Seip and Cichowski 1996, p. 79; MCTAC 2002, pp. 20–21; Kinley and Woods 2006, all). Fragmentation and loss of caribou habitat make it difficult for the species to spread out over large areas, and these have been identified as threats to caribou conservation (USFWS 2008, pgs. 16–17). Caribou are also sensitive to winter recreational activities, and may be displaced from habitat by recreational activities, especially snowmobiling (Kinley 2003, pg. 25; Seip *et al.* 2007, pg. 1543; Mahoney *et al.* 2001, pg. 42; Reimers *et al.* 2003, pg. 751; Tyler 1991, pgs. 183–188). Additionally, one peer reviewer stated that interactions between caribou and hikers on preferred summer range may increase susceptibility of caribou to predation (Allen 2012, pers. comm.). Thus, recreational activities can exacerbate the effects of forest fragmentation and loss to caribou by further condensing caribou habitat use into smaller areas. Forcing caribou into smaller areas (*i.e.,* increasing their density) may increase their susceptibility to predation. Predation, while not necessarily within the scope of this rule to address, is nonetheless a factor that has been identified as a long-term threat to caribou persistence. Therefore, the proposed rule suggests that human activities in designated caribou critical habitat should be minimized to reduce some of the ongoing effects of caribou habitat fragmentation upon the species. However, we acknowledge that the IPNF has implemented extensive measures to protect caribou and caribou habitat on its ownership, both within the area proposed for designation as critical habitat as well as the existing Selkirk Mountain Caribou Recovery Zone. Therefore, we do not foresee or anticipate substantive changes in the existing management of caribou or its habitat within the area designated as critical habitat on IPNF ownership.

Regarding the final rule's effect upon USBP activities, the designation of critical habitat for southern Selkirk Mountains woodland caribou would not restrict, regulate, or determine the ability of the USBP to operate in close proximity to the border, as has previously been discussed in more detail in our response to comment 50.

(63) *Comment:* The IPNF commented that much of the area listed as occupied by the southern Selkirk Mountains population of woodland caribou at the time of emergency listing was not actually occupied in 1983, and suggested the Service designate a defined habitat (*i.e.,* mature old growth subalpine fir—cedar hemlock) as occupied and unoccupied based on the recovery plan and other information on occupancy in 1983.

Our Response: We have determined that the area generally depicted in Scott and Servheen (1984, p. 27), adjusted for elevation and habitat based on the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem, represents the best available scientific information regarding the geographic area occupied by caribou at the time of listing. For further explanation, see comment 1.

(64) *Comment:* The IPNF commented that the findings of Kinley and Apps (2007) should be used in conjunction with other stand-based data from land management agencies (*i.e.,* the USFS and the IDL) to inform our final critical habitat designation.

Our Response: The area we proposed for designation as southern Selkirk Mountains population of woodland caribou critical habitat was based on a synthesis of the best available scientific information that included Kinley and Apps (2007), as well as other relevant scientific documents and records pertaining to the historical and current distribution and habitat use of the southern Selkirk Mountains population of woodland caribou. We received numerous comments from various commenters including peer reviewers, Federal agencies, the State of Idaho, the Kalispel and Kootenai Tribes, and members of the public regarding the science we used and synthesized to develop the proposed designation. We utilized all substantive input from these commenters in refining the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou in this final rule. Based on this input, the final designation differs from the proposed designation in several ways, which are identified in the Summary of Changes section of this rule.

Comments Related to Economics and the Draft Economic Analysis

(65) *Comment:* The Bonner County Commissioners commented that economic impacts of recreational access restrictions will be significant, stating that local resorts reported losses of up to 70 percent of their winter revenue following the first caribou closure. They expressed concern that Federal nexus situations could result in the County being prohibited from winter snowmobile trail grooming, and that additional businesses may close if further restrictions cut deeper into winter revenues of resorts, eating and drinking establishments, grocery stores, and other businesses that benefit from snowmobile revenues. This concern was also expressed by the State of Idaho. The County expressed concern that the loss of additional full-time employment could threaten the viability of the elementary school, which has only 45 students, and stated that Priest Lake's winter economy is fragile, based on recreational tourism, and sensitive to changes in recreational activities. Another commenter expressed concern about losing winter income due to trail closures, and requested an ''on the ground'' study to determine the economic impact on small entities. They stated that most of the communities around the proposed critical habitat are small and relied on timber products and logging as a primary income base for years, later adapting to a recreation-based economy.

Response: The final designation of critical habitat has been reduced from 375,562 ac (151,985 ha) in the proposed critical habitat rule to 30,010 ac (12,145 ha) in this final rule (see response to Comment 1). There are no Bonner County lands included in the final designation. As a result, the only incremental economic impacts that would occur are the additional administrative costs to the Federal agencies associated with section 7 consultation in areas within the CNF, Idaho Panhandle (Kaniksu) National Forest, and Salmo-Priest Wilderness areas. We do not anticipate any economic costs to recreational interests beyond existing requirements under USFS management plans or other policies.

(66) *Comment:* The Idaho State Snowmobile Association (ISSA) submitted an economic study completed by Forest Econ Inc. (FEI) on impacts that have occurred since 2005, looking primarily at recreation and timber harvesting (FEA, p. ES–6). The results of the study are based on assumptions that all forest owners would require Environmental Protection Agency (EPA) NPDES (National Pollutant Discharge Elimination System) permits for point source outfalls (*i.e.,* logging roads), starting in 2010, and a subset of those

forest owners would have restrictions placed on timber harvesting due to southern Selkirk Mountains population of woodland caribou conservation efforts. The study expands its assumptions by projecting indirect effects to mills and other economic activities that depend on timber harvesting. As a result, the FEI study estimates $4.6 million in lost annual earnings to the timber industry in northern Idaho, $37,000 in lost annual earnings in the Priest Lake area due to other forestry effects, and up to 76 recreational jobs lost in the Priest Lake area.

Response: Forest Econ Inc. uses input-output modeling to analyze regional economic impacts (*i.e.,* output and employment) on two spatial scales: impacts to the Priest Lake area and impacts to the broader Northern Idaho region. The main activities analyzed in the report are recreation and timber harvesting, which collectively make up the majority of the local winter economy in the Priest Lake area (46 percent tourism and 16 percent wood products), according to the report. To analyze snowmobiling impacts, FEI began documenting economic impacts in 2005—the year in which Defenders of Wildlife, Conservation Northwest, the Lands Council, Selkirk Conservation Alliance, Idaho Conservation League, and Center for Biological Diversity challenged two biological opinions, which resulted in the injunction that restricted winter recreation through trail closures. The authors used two approaches to determine local effects of these events in the Priest Lake area: (1) a statistical analysis of changes in snowmobile trips using registration and groomer permits over the period of the analysis, and (2) detailed surveys of the economic impacts to local businesses. The table below summarizes these impacts, as predicted by FEI. This estimate to impacts to the local economies was based on the area originally proposed for designation, and not on the geographic area delineated within the final designation, which has been reduced by 345,552 ac (139,840 ha) from the proposed rule. The analysis performed by Forest Econ, Inc., therefore, does not address the potential impacts of a much smaller critical habitat designation, which is now solely on USFS lands.

TABLE 1—LOCAL ECONOMIC IMPACTS REPORTED BY FOREST ECON, INC.

Impacts	Location	Jobs lost	Lost annual earnings
Recreation	Priest Lake Area	26 (approach 1), 76 (approach 2)	N/A
Timber	Northern Idaho	126	$4,600,000
Other Forestry Effects	Priest Lake Area	−12	37,000

(67) *Comment:* One commenter noted that it is important for the economic analysis to compare the local economy to other counties in Idaho without caribou restrictions, and to the national and international economies. The commenter also suggested that changes in snow precipitation over time should also be a factor considered within the immediate area and the broader regional economy. They stated that this approach would help distinguish the recovery area impacts from those that we have no immediate control over, but that we should be taking into consideration when undertaking any future planning.

Response: Section 4(b)(2) of the Act requires, in part, that we take into consideration the economic impact of specifying any particular area as critical habitat. The economic analysis prepared for this final rule addresses that requirement by considering the incremental costs associated with the designation, which are above and beyond costs attributable to the listing of the southern Selkirk Mountains population of woodland caribou (*i.e.,* the baseline costs). Accordingly, preparing an economic analysis that compares the local economy with other Idaho counties and the national and international economies would be beyond the scope of the proposed rule. Although the rationale behind the commenter's suggestion that we include snow levels as a factor evaluated in the economic analysis is not entirely clear, the suggested approach would not be relevant or informative to the final designation of critical habitat for this species.

(68) *Comment:* The State of Idaho notes that there could be actions with a Federal nexus on IDL-managed lands that could trigger section 7 consultation regarding caribou critical habitat and that are not recognized in the DEA. IDL expressed concern that the Service ignored costs of the designation under the presumption that there is no Federal nexus to initiate a section 7 consultation. The IDL questioned the rationale behind using the lack of a formal consultation history with the COE for section 404 permits on IDL lands as a prediction for future consultation requirements. The IDL also commented that the COE would have to initiate formal consultation due to prior case law surrounding the ''but for test'', and that since a majority of IDL stream crossing installations and upgrades are directly tied to timber sales due to the funding component, any timber sale management activity associated with the permitted installation could be subject to consultation.

Response: Section 7(a)(2) of the Act requires that Federal agencies insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of any endangered or threatened species, or destroy or adversely modify critical habitat. The Federal agency is responsible for contacting the Service for a list of endangered or threatened species and their critical habitats or technical assistance, and making the effects determination. The outcome of the Federal agency's effects determinations can include (1) no effect; (2) may affect, but not likely to adversely affect; or (3) may affect, and likely to adversely affect. With regard to critical habitat, formal consultation is only triggered for actions that are likely to adversely affect listed species. A Federal agency does not need to initiate formal consultation if, as a result of the preparation of a biological assessment under 50 CFR 402.12, or as a result of informal consultation with the Service under 50 CFR 402.13, the Federal agency determines (with the written concurrence of the Director), that the proposed action is not likely to adversely affect any listed species or critical habitat. Accordingly, formal section 7 consultation is not an unconditional requirement. Since there are no IDL lands being designated as critical habitat by this final rule, no additional requirements would be imposed on the State as a result of the critical habitat designation. However, Federal requirements could still be applicable on State lands for other activities (*e.g.,* Clean Water Act permits or compliance with best management

practices associated with silvicultural exemptions for activities such as road construction, stream crossings, fill discharged into waters of the United States to support staging areas, rock quarries, landings, etc.).

(69) *Comment:* IDL notes that on page 2–2, paragraph 35 of the DEA, there is direction in 2001 to measure coextensive impacts.

Response: In 2001, the U.S. Court of Appeals for the Tenth Circuit instructed the Service to conduct a full analysis of all of the economic impacts of proposed critical habitat, regardless of whether those impacts are attributable coextensively to other causes. Since that decision, however, courts in other cases have held that an incremental analysis of impacts stemming solely from the critical habitat designation is proper (FEA p. 2–2), (*Arizona Cattle Growers' Assoc.* v. *Salazar,* 2009 U.S. App. Lexis 29107 (9th Cir. June 4, 2010)), *Otay Mesa Property L.P.* v. *DOI,* 2010 U.S. Dist. Lexis 52233 (D.D.C. May 27, 2010)). Additionally, on October 3, 2008, the Department of Interior's Office of the Solicitor issued a Memorandum Opinion (M–37016) that summarizes recent case law on this issue and corroborates that the incremental analysis of economic impacts is appropriate.

(70) *Comment:* IDL stated that they completed a detailed analysis of the very real economic impact this proposed designation would cause, which was ignored by the Service. The IDL analysis projects the designation would significantly impact IDL's ability to manage over 65,000 ac (26,260 ha) of forestlands, significantly reduce revenues to K–12 public education, and increase fire protection costs. The calculated value of timber revenue loss over the next 30 years was estimated to be $23,030,810, with an average annual loss of $713,470. The IDL analysis projected losses of 109,800 mbf of timber volume, 1,976 jobs, $67,417,200 in foregone income, and $285,480,000 in foregone goods and services over a 30-year period. They also projected combined costs related to fire suppression to exceed $3,495,310 over a 30-year period.

Response: The basis for IDL's economic analysis is an assumption that IDL would be required to adopt Federal harvest restrictions and meet onerous and costly Federal requirements based on the presence of a Federal nexus for their activities, which we are unable to substantiate. Additionally, the presence of a Federal nexus does not necessarily equate to additional conservation measures being required for a particular activity, since there are several possible outcomes to section 7 consultation. Nevertheless, there are no IDL lands being designated as critical habitat in this final rule.

(71) *Comment:* IDL stated concerns that any harvesting of stands with old-growth characteristics is considered habitat degradation, and may therefore be restricted if critical habitat is designated.

Response: Based on a revision of the critical habitat boundaries, IDL lands are no longer included in the designation. As stated earlier, we do not expect changes in forest management on any lands solely due to the critical habitat designation for the southern Selkirk Mountains population of woodland caribou, since a jeopardy analysis under section 7, which is triggered by the listing of a species under the Act, also considers harm to habitat. If a section 7 consultation were to be required on any timber lands that had old growth characteristics, it is unlikely that any project modifications in that area would be attributable solely to the critical habitat designation, since any conservation measures required to avoid jeopardy would likely be identical to measures needed to avoid adverse modification of critical habitat.

(72) *Comment:* The U.S Forest Service noted two concerns about the economic analysis that relate to management of lands within IPNF: (1) the analysis does not consider the effects on summer recreation and the business that supports those activities, and (2) the analysis only considers activities with a Federal nexus, therefore missing effects on businesses that support recreation.

Response: Recreation in IPNF varies by season. In the spring, summer, and fall, activities include use of recreational vehicles (ATVs, motorcycles), sight-seeing, wildlife viewing, hiking, mountain biking, horseback riding, camping, geo-caching, hunting, fishing, photography, and berry picking, while in the winter, activities include snowmobiling, cross-country skiing, snowshoeing, and trapping. Currently, recreational activities do not have much effect on caribou habitat, but can affect the use of the habitat by caribou through disturbance. The IPNF already consults with the Service on the southern Selkirk Mountains population of woodland caribou, so the incremental effect of the designation will involve including consideration of the potential for adverse modification of caribou habitat as part of each consultation. Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to insure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation.

(73) *Comment:* The State of Idaho commented that: (1) Critical habitat designation prohibits adverse modification of critical habitat, a standard that is largely unmeasurable and unquantifiable; (2) all activities occurring on Federal, State, and private land designated as critical habitat that have a Federal nexus will have to go through additional and costly consultation with the Service to ensure that those activities are not impacting critical habitat for the southern Selkirk Mountains population of woodland caribou; (3) significant and costly changes associated with how land-use activities are authorized and carried out is anticipated with designation of critical habitat; and (4) they were concerned about future requirements to obtain a point-source NPDES permit for forest roads, or other as yet unknown Federal nexus situations created by further mandates.

Our Response: The following responses correspond to the comment numbers: (1) Caribou are habitat specialists, relying on boreal forest habitats for their survival. Therefore, due to the caribou's precarious population status and because the project-related impacts will most likely affect the persistence, development, and recycling of caribou habitat, we anticipate that the measures required to avoid adverse modification and those required to avoid jeopardy will, in most instances, be identical. Federal agencies have been consulting with the Service on the potential effects of proposed actions on the southern Selkirk Mountains population of woodland caribou since this population was emergency listed in 1983. Consultation, under the jeopardy standard, has been completed on these activities with nonjeopardy findings. Proposed projects have ranged from timber harvests and fuels management to recreational

development. We expect that, for a proposed action to result in jeopardy or adverse modification (in other words substantially reduce the conservation value of caribou habitat to such an extent that would affect its ability to serve its intended recovery role), it would likely have to significantly alter large areas of high-elevation mature to old-growth western hemlock/western red cedar climax forest or subalpine fir/Engelmann spruce climax forest, or restrict caribou movement through such areas. Therefore, similar to consultations completed under the jeopardy standard, we do not anticipate the proposal of any project at a scale that would adversely modify critical habitat. (2) As stated above, Federal agencies have been consulting with the Service on the potential effects of proposed actions on the southern Selkirk Mountains population of woodland caribou since this population was emergency listed in 1983. We do not anticipate the need to complete additional consultations for new projects proposed in areas designated as critical habitat that would not otherwise be subject to section 7 consultations. We acknowledge that there may be a few ongoing projects, for which consultation under the jeopardy standard has been completed, that consultation may need to be reinitiated to address critical habitat. However, we do not anticipate that the economic costs required to reinitiate consultation for ongoing projects will be significant. (3) For the above stated reasons, and because Federal agencies that manage land within the critical habitat area already take extensive measures to protect the caribou, we do not foresee or anticipate substantive changes in the existing management of caribou or its habitat. (4) We acknowledge that there exists some uncertainty as to how the recent court decision regarding the EPA administration of NPDES permits related to point-source discharges stemming from use of forest roads; however, we cannot project when, or if, changes to permitting for roads or other yet unknown situations may occur that would require additional section 7 consultation with Federal agencies such as the EPA, for activities on State lands. However, should this ruling stand, consultation on the species in occupied areas will be required under the regulations, regardless of the critical habitat designation.

(74) *Comment:* Bonner County commented that the level of economic impact on Bonner County and the Priest Lake Area was out of balance with the low probability that the southern Selkirk Mountains population of woodland caribou will inhabit the proposed critical habitat area in the future.

Our Response: There are no Bonner County or Priest Lake area lands being designated as critical habitat in the final designation.

Summary of Changes From Proposed Rule

As discussed previously in the Summary of Comments and Recommendations section, comments submitted by the peer reviewers, State of Idaho, Kootenai Tribe of Idaho, and others caused us to reexamine our analysis used to determine critical habitat in the proposed rule. As a result, we are designating critical habitat for the southern Selkirk Mountains population of woodland caribou on 30,010 ac (12,145 ha) of Federal land in Boundary County, Idaho, and Pend Oreille County, Washington. The final designation represents a reduction of approximately 345,552 ac (139,840 ha) from the critical habitat originally proposed for designation (76 FR 74018, November 30, 2011); and reflects a 1,000-ft (about 300-m) change in elevation from 4,000 ft (1,220 m) in the proposed rule, to an elevation at or above 5,000 ft (1,520 m), based on the results of population surveys since the time of listing and a seasonal habitat suitability model developed by Kinley and Apps (2007, entire) as discussed below. This reduction is primarily a function of: (1) Census monitoring documenting low numbers of individual caribou in the United States during annual surveys; (2) the proximity of the animals that have been observed in the United States to the U.S.-Canadian border; (3) the lack of long-term success of several herd augmentation efforts involving over 100 caribou from herds in British Columbia to recover the population in the United States; (4) information indicating that the recovery objectives identified in the 1994 recovery plan are outdated and need to be revised to reflect the current needs of this population; and (5) ongoing efforts in Canada to secure and manage habitat to conserve Selkirk Mountain caribou populations in British Columbia, each of which is discussed in more detail below.

There are four primary factors we considered in developing our final designation that resulted in this change from the proposed rule: (1) A revised determination of the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing based on comments we received, including those from peer reviewers, which caused us to reevaluate surveys conducted by Scott and Servheen (1984, 1985), as well as census monitoring documenting low numbers of individual caribou observed in the United States during annual surveys, (2) information and literature reporting the overall decline of the subspecies mountain caribou (*Rangifer tarandus caribou*) across its range, and in particular the decline of woodland caribou populations in the southern extent of their range, including the southern Selkirk Mountains population of woodland caribou; (3) information on areas currently conserved and managed for the conservation of woodland caribou in the Selkirk Mountains in British Columbia, Canada, including the status of the Canadian recovery actions for mountain caribou; and (4) the applicability as well as the status of the recovery objectives identified in the 1994 Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994).

In developing our November 30, 2011 (76 FR 74018), proposed rule for critical habitat, our first step was to identify areas that provided for the conservation of the southern Selkirk Mountains population of woodland caribou within the geographical region described as the approximate area of normal utilization in the listing rule (49 FR 7390; February 29, 1984). This area of normal utilization included portions of the CNF in Washington and the IPNF in Idaho, and some Priest Lake Endowment Lands managed by the state of IDL. Critical habitat boundaries were identified at or above 4,000 ft (about 1,220 m) in elevation, which corresponds to the elevation above which the woodland caribou are generally known to occur within the southern Selkirk Mountains ecosystem in Idaho and Washington (Layser 1974, p. 25–26; USFWS 1994, p. 6; USFWS 2008a, p. 2). We then overlaid seasonal telemetry radiolocations collected from caribou that were translocated into the southern Selkirk Mountain ecosystems (British Columbia, Idaho, and Washington), from 1987 through 2004 by the IDFG, Washington Department of Fish and Wildlife, and the Fish and Wildlife Compensation Program (Columbia Basin) in British Columbia. To further refine the proposed critical habitat boundaries, we overlaid currently defined recovery area boundaries, caribou movement corridors mapped by the IPNF (USFS 2004, pp. 22–23), and results of the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem. Isolated patches and some larger areas were removed

because they either lacked PCEs, were adjacent to Schweitzer ski resort, or had relatively low historical utilization based on telemetry data. We included certain areas below 4,000 ft (about 1,220 m) in elevation where seasonal connectivity between habitats was required.

After considering the peer reviewers' comments, we now consider studies conducted by Scott and Servheen (1984, 1985) to be the most definitive with regard to determining occupancy at the time the caribou was listed in 1983 (48 FR 1722). During their study in 1983–1984, which was conducted in the Selkirk Mountains in southeastern British Columbia, northern Idaho, and northeastern Washington, Scott and Servheen (1984, pp. 16–28) documented extensive use by caribou of habitat in British Columbia in drainages just north and adjacent to B.C. Highway 3. In contrast, they documented use of habitat in the United States by only two bull caribou located near Little Snowy Top and Upper Hughes Ridge in Idaho, and Sullivan Creek in Washington (p. 19). Caribou were not documented any further south within Washington or Idaho during the course of helicopter and ground tracking surveys. Consequently, we have determined that the area generally depicted in Scott and Servheen (1984, p. 27), adjusted for elevation and habitat based on the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem, represents the best available scientific information regarding the geographical area occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing. This is further supported by annual census surveys conducted by IDFG and Canada (DeGroot and Wakkinen, 2012), which have documented zero to four individual caribou observed only near the border within the United States from 2001 through 2012 (DeGroot and Wakkinen 2012, Table 2). This new analysis of which areas were occupied at the time of listing, which areas are documented to be occupied based on recent annual surveys, and which areas are essential to the conservation of the southern Selkirk Mountains population of woodland caribou greatly reduced the amount of area included in our final designation from our proposed rule.

We evaluated the area we now consider to have been occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing, the results of population surveys, and the 1994 Selkirk Mountains Woodland Caribou Recovery Plan. We have determined that the recovery plan is outdated and no longer represents the best available science with regard to the essential conservation needs of the southern Selkirk Mountains population of woodland caribou, as was recognized in the 2008 5-year review of this population. Our 5-year review acknowledged that the recovery criteria no longer reflect the best available and most up-to-date information on the biology of the species and its habitat, and that since 1994, a great deal of information has been collected regarding the southern Selkirk Mountains population of woodland caribou and their habitat (USFWS 2008a, p. 15). When the population was listed, it consisted of 25–30 individuals, whose distribution centered primarily in British Columbia (Scott and Servheen 1985, p. 12). Between 1987 and 1990, the population was augmented with 60 animals from source herds in British Columbia, which were placed in Idaho. The 1994 recovery plan objectives center on maintaining an increasing population, securing and managing habitat, and establishing a third herd in Washington State using donor animals from British Columbia. Between 1996 and 1998, the population was augmented with 43 additional animals, some of which were placed in Washington, and some of which were placed north of the border. Although 103 caribou were translocated to the United States, none of the above augmentation efforts resulted in a long-term improvement in caribou distribution within the recovery area identified in the 1994 recovery plan. Rather, for reasons not fully understood, this population of caribou appears to be primarily dependent upon the availability of habitat in British Columbia, based on the results of annual population monitoring surveys (see Table 2).

TABLE 2—CARIBOU CENSUS INFORMATION, 1991 THROUGH 2012

[From USFS 2004, p. 7 and DeGroot and Wakkinen 2012, p. 12]

Year	Area	US—BC observations	Caribou total
1991	US	26	47
	BC	21	
1992	US	24	47
	BC	23	
1993	US	23	51
	BC	28	
1994	US	13	45
	BC	32	
1995	US	13(a)	52
	BC	39	
1996	US	12	39
	BC	27	
1997(b)	US	9	39
	BC	30	
1998(c)	US	31	45
	BC	14	
1999(d)	US	6	48
	BC	42	
2000	US	3	34
	BC	31	
2001	No census due to low snowpack		

TABLE 2—CARIBOU CENSUS INFORMATION, 1991 THROUGH 2012—Continued

[From USFS 2004, p. 7 and DeGroot and Wakkinen 2012, p. 12]

Year	Area	US—BC observations	Caribou total
2002	US	2	34
	BC	32	
2003	US	1	41(e)
	BC	40	
2004	US	3	33
	BC	30	
2005	US	2	35(f)
	BC	33	
2006	US	1	29–38
	BC	33	
2007	US	2	43–44
	BC	42 or 43	
2008(g)	US	3	46
	BC	43	
2009(g)	US	2	46
	BC	41	
2010(g)	US	2	43
	BC	41	
2011(g)	US	0	36
	BC	36	
2012(g)	US	4	27
	BC	27	

a—Known incomplete count (tracks of a small group [2–4] detected but animals not observed during helicopter flight.
b—Includes 19 animals released in 1996.
c—Includes 13 animals released in 1997.
d—Includes 11 animals released in 1998.
e—Likely some double counting and therefore not a reliable count.
f—Not a complete census. Must be considered a minimum count.
g—Combination fixed wing/helicopter survey.

This table reflects a significant decline in the number of caribou documented in the United States, other than in the years immediately following several augmentation efforts. Based on the best available information, the Service does not consider the extensive areas identified in the 1994 recovery plan to be essential to the conservation of the species.

In addition, the future availability of caribou from British Columbia herds for augmentation within the United States is questionable, given the significant declines in the British Columbia populations and overall lack of success of prior augmentation efforts (US GAO 1999, Appendix 4). Future recovery planning efforts will need to take into consideration the best available information, including that gained as a result of this final critical habitat designation. In accordance with section 4(f)(1) of the Act, the recovery plan will describe site-specific management actions needed for the conservation and survival of the southern Selkirk Mountains population of woodland caribou; identify objective and measureable recovery criteria; and estimate the time and costs required to carry out the measures identified in the recovery plan. Prior to the development of a revised recovery plan, the Service will request scientific information, as well as input from the public, tribes, Federal, State, and local agencies. There will also be an opportunity for public review and comment on a draft recovery plan prior to its final approval.

We reviewed the most recent literature describing the overall decline of the mountain ecotype of woodland caribou, of which the southern Selkirk Mountains population of woodland caribou is considered to be aligned based on their movement and feeding behavior (Cichowski *et al.,* 2004, pp. 235–236; Wittmer 2005, entire; USFWS 2008a, entire). Historically, woodland caribou were distributed throughout much of Canada and portions of the northern United States, where they were widespread and numerous when the first Europeans arrived in British Columbia (Spalding 2000, p. 40). Since that time, the overall geographical range for woodland caribou has been reduced, with most of the reduction occurring in the southern extent of its historical range (Spalding 2000, p. 40). By the 1990s, woodland caribou were considered one of the most critically endangered mammals in the world (U.S. GAO 1999, p. 5). It has been estimated that nearly 60 percent of the woodland caribou's historical range has been lost in western North America (Hatter pers. comm. in Spalding 2000, p. 40).

British Columbia contains three ecotypes of woodland caribou: the boreal caribou, the northern caribou, and the mountain caribou, of which the southern Selkirk Mountains population is part. For the mountain caribou ecotype, there has been a long-term population decline and range reduction in British Columbia (Siep and Cichowski 1996, p. 74), with one estimate that mountain caribou have been eliminated from as much as 43 percent of their historical range in British Columbia (MCTAC 2002, pp. v, 5). Most mountain caribou ecotype populations contain fewer than 100 individuals, and the majority of populations are declining (MCTAC 2002, p. 6; Wittmer *et al.* 2005, Table 2). Trends in populations are varied, but southern populations appear to be decreasing more rapidly than northern ones (Wittmer *et al.* 2005, p. 411). In one extreme example, the population estimate in the Purcell Mountains in southern British Columbia declined from over 60 individuals in 1995, to only 14 in 2009 (Kinley 2010, Figure 4).

In the United States, the sole remaining population of caribou is the southern Selkirk Mountains population of woodland caribou (US GAO 1999, p. 4; Cichowski 2010, Figure 1; Poole and

Mowat 2001, p. 2001). When the population was listed in 1983, it consisted of 25 to 30 animals, whose distribution centered primarily around Stagleap Provincial Park in British Columbia. As stated earlier, between 1987 and 1990, the population was augmented with 60 animals from source herds in British Columbia that were placed in the Idaho portion of the Selkirk ecosystem, and between 1996 and 1998, the population was augmented with 43 animals, some of which were placed in Washington, and some of which were placed just north of the border in British Columbia (USFWS 2008a, p. 15). As noted above in our occupancy discussion, surveys from 2001 through 2010, have indicated that most individuals of this population were observed in British Columbia (DeGroot and Wakkinen 2012, Table 2). This information also comports with the earlier Scott and Servheen reports on caribou ecology (1984, 1985), which state, ''as the number of U.S. sightings declined since the early 1970s, concern has mounted that caribou may be abandoning the U.S. portion of their range.''

Our reassessment of the best available information at this point in time leads us to conclude that the majority of habitat essential to the conservation of the southern Selkirk Mountains population of woodland caribou occurs in British Columbia, Canada, and that although the U.S. portion of the habitat used by the caribou makes an essential contribution to the conservation of the species, habitat on the U.S. side of the border is not independently capable of conserving the species to the extent anticipated at the time the 1994 recovery plan was developed. The geographical area that provides the PBFs essential to the conservation of the species, therefore, spans the border, and most of it lies in Canada. Since we can only designate critical habitat within the United States (50 CFR 424.12(h)), we are designating those areas within the United States that we consider to have been occupied at the time of listing, as described above, and that provide the PBFs essential to the conservation of the species.

The 1994 Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994) recommended that an area of approximately 443,000 ac (179,000 ha) would be needed to support a recovered population of the southern Selkirk Mountains population of woodland caribou in the Selkirks (p. 31). It further states that the conservation of these habitats is an important element of caribou recovery, and that research will better define these habitats (p. 31). Prior to the 1987 translocation effort, a study on the population characteristics of the southern Selkirk Mountains population of woodland caribou was initiated that provided background stating, ''Concern has mounted in recent years that caribou many be abandoning the United States portion of their range * * * '' (Scott and Servheen 1984, p. 16). Other than the geographical areas Scott and Servheen (1984) identified in their study that were occupied at the time of listing, the recovery areas identified in the 1994 recovery plan are not being utilized by caribou. Many of those areas listed in the recovery plan were, and continue to be, USFS lands managed for the southern Selkirk Mountains population of caribou, and contain one or more of the PBFs identified in this rule. However, for reasons not fully understood, this population of woodland caribou continues to make greater use of habitat in Canada than would be predicted, based on the availability of habitat in the United States as identified in the Kinley and Apps (2007) modeling study. Consequently, we no longer find the extensive areas initially identified for the recovery of the woodland caribou population within the United States to be essential to the conservation of the species.

We have determined that an area of approximately 30,010 ac (12,145 ha) within the United States was occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing and provides the PBFs essential to the conservation of the species, and which may require special management considerations or protection. This area therefore meets the definition of critical habitat for the southern Selkirk Mountains population of woodland caribou. We also assessed the total area of lands likely needed by the southern Selkirk Mountains population of the woodland caribou, without regard to international boundaries. We determined that the 30,010 ac (12,145 ha) at an elevation of 5,000 ft (1,520 m) and above designated as critical habitat within the Selkirk Mountains in the United States, combined with the amount of habitat protected and managed for woodland caribou within Canada, meets the amount of habitat recommended to be secured and enhanced in the 1994 Recovery Plan (443,000 ac, 179,000 ha) to support a recovered population (USFWS 1994, pp. 28, 30–31). Currently, Canada has protected 282,515 ac (114,330 ha) of Crown Lands from further timber harvest within the Selkirk Mountains to support woodland caribou conservation (DeGroot, pers. comm. 2012). The Nature Conservancy of Canada also recently purchased approximately 135,908 ac (55,000 ha) of the former Darkwoods property located within the Selkirk Mountains in British Columbia, and halted all logging activities in woodland caribou habitat (The Nature Conservancy of Canada 2011, p. 4; DeGroot pers. comm. 2012). These Nature Conservancy lands are essentially surrounded by the protected Crown Lands described above. Thus, adding the designation of 30,010 ac (12,145 ha) of critical habitat in the United States to the habitats currently protected and conserved for woodland caribou in Canada provides approximately 448,443 ac (181,478 ha) of habitat protected within the Selkirk Mountains for woodland caribou conservation. Additionally, areas in the United States designated as critical habitat for the species are immediately adjacent with, and contiguous to, the Crown Lands protected in Canada for woodland caribou conservation. The protection of these connected habitats in the United States and British Columbia will facilitate continued woodland caribou movement and seasonal habitat use and other behaviors that this population currently and historically exhibited.

Therefore, on the basis of this reevaluation of the best available data and the information provided in the 1994 Recovery Plan for the Selkirk Mountains Woodland Caribou, we are designating 30,011 ac (12,145 ha) at an elevation of 5,000 ft (1,520 m) and above, on Federal lands in Boundary County, Idaho, and Pend Oreille County, Washington, as critical habitat for the southern Selkirk Mountains population of woodland caribou in the United States. This area represents our best assessment of the area occupied by the species at the time of listing in 1983 that provides the PBFs essential to the conservation of the species. This area, when combined with areas secured and protected for the conservation of the species in British Columbia, meets the area requirements recommended in the original recovery plan for the species. Although the recovery plan, as written, envisioned that more of the recovery area for the species would fall within the United States, the best scientific information available indicates that the range of the southern Selkirk Mountains population of woodland caribou has largely shifted northward, and that the vast majority of the areas that provide the essential habitats for this population of woodland caribou now occurs within

Canada. As stated earlier, multiple efforts to augment the existing woodland caribou population with more than 100 animals from source herds in British Columbia between 1987 and 1990, and 1996 and 1998, have not resulted in any long-term improvement in caribou distribution throughout the southern Selkirk Mountains. The number of woodland caribou detected in the United States has continued to dwindle and annual census surveys continue to find the majority of the remaining population occupying habitats in British Columbia. Due to what appears to be an ongoing range contraction of the woodland caribou population from the southern extent of its former range, and the overall decline of the mountain ecotype of woodland caribou in British Columbia, in particular the more southern populations, we have determined that there are no areas within the United States outside the geographical area occupied at the time of listing that are essential to the conservation of the species.

An additional change from our proposed rule was the refinement in our description of PCE 1 to more accurately reflect the seasonal habitats utilized by the southern Selkirk Mountains population of woodland caribou. This refinement did not affect the amount of acreage designated for critical habitat. In addition, we broadened our description of essential habitats for PCE 2 to include high-elevation basins, as well as ridgetops that are at or above 6,000 ft (1,830 m)—regardless of snowpack level, since pregnant females from the southern Selkirk Mountains population of woodland caribou were reported to prefer alpine habitats at all scales irrespective of forested conditions. These changes are discussed in the Primary Constituent Elements (PCEs) below, and in the *Physical or Biological Features* section. The PCEs presented in the proposed rule (76 FR 74081) were revised based on peer review and public comments, and information received in response to the proposed critical habitat designation. A more detailed discussion of the factors we used to identify critical habitat for this final rule can be found in the ''Criteria Used to Identify Critical Habitat.''

Critical Habitat

Background

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

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

(a) Essential to the conservation of the species and

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

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

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

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

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

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat based on the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is

generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p.4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the southern Selkirk Mountains population of woodland caribou that would indicate what areas might become important to the species in the future. Therefore, as explained in the proposed rule (76 FR 74028), we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change.

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

The protections of the Act, and the need to consult on Federal activities (or projects where there is a Federal nexus) apply when a proposed Federal action may directly or indirectly affect a listed species and/or designated critical habitat. For the southern Selkirk Mountains population of woodland caribou, the area occupied by the species at the time of emergency listing in 1983, which serves as the basis for this determination of critical habitat, is not the same as the area that may currently be occupied by the species (50 CFR 424.02). For example, we have anecdotal, but unconfirmed, reports of live and dead caribou, tracks, and shed antlers within the United States portion of the recovery area described in the 1994 recovery plan, from 2000 through 2008 (USFWS 2008b, pp. 86–87), which have been reported during all seasons and in both Washington and Idaho. Our standard under section 4(b)(2) is to apply the best available scientific data available when identifying areas that meet the definition of critical habitat (*e.g.,* areas that are essential to the conservation of the species). We do not find anecdotal reports of caribou sightings satisfies this standard, and they have not been considered for purposes of this final critical habitat designation.

Physical or Biological Features

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

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

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

(3) Cover or shelter;

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

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

We derive the specific PBFs essential for the southern Selkirk Mountains population of woodland caribou from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on November 30, 2011 (76 FR 74018), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on February 26, 1984 (49 FR 7390) and the 1994 Revised Recovery Plan for the Selkirk Mountains Woodland Caribou, and the Southern Selkirk Mountains Caribou Population 5-Year Review completed by the Service on December 2, 2008 (USFWS 2008a). We have determined that the southern Selkirk Mountains population of woodland caribou requires the following physical or biological features:

Space for Individual and Population Growth and for Normal Behavior

The southern Selkirk Mountains population of woodland caribou requires large contiguous areas of high-elevation coniferous forest summer and winter habitat, with little or no vehicle access and disturbance, so the caribou can spread out at low densities (*i.e.,* 30–50 caribou/250,000 ac (100,000 ha)) and avoid predators (Seip and Cichowski 1996, p. 79; Stevenson *et al.* 2001, p. 1). Mountain caribou strongly prefer old-growth forests to young forests in all seasons (Stevenson *et al.* 2001, p. 1).

The primary long-term threat to the southern Selkirk Mountains population of woodland caribou is the ongoing loss and fragmentation of contiguous old-growth forests and forest habitats due to a combination of timber harvest, wildfires, and road development. The

effects associated with habitat loss and fragmentation are: (1) Reduction of the amount of space available for caribou, limiting the ecological carrying capacity; (2) reduction of the arboreal lichen supply, affecting the caribou's key winter food source; (3) potential impacts to caribou movement patterns; (4) potential effects to the caribou's use of remaining fragmented habitat because suitable habitat parcels will be smaller and discontinuous; and (5) increased susceptibility of caribou to predation as available habitat is compressed and fragmented (Stevenson *et al.* 2001, p. 10; MCTAC 2002, pp. 20–22; Cichowski *et al.* 2004, pp. 242; Apps and McLellan 2006, pp. 92–93; Wittmer *et al.* 2007, pp. 576–577).

Forest management practices have been one of the greatest concerns for caribou habitat management since the mid-1970s (Stevenson *et al.* 2001, p. 1; MCTAC 2002, p. 17; British Columbia 2004, p. 242). Improved road access, developments in log processing that resulted in better utilization of smaller trees, suitable sites for conducting summer logging, and other forest product demands have increased interest in some areas of caribou winter ranges for timber harvesting (Cichowski *et al.* 2004, p. 242). Timber harvest has moved into high-elevation mature and old growth forest habitat types due to more roads and more powerful machinery capable of traversing difficult terrains (Stevenson *et al.* 2001, p. 10). Timber harvesting can reduce and fragment areas creating a patchwork of different age classes of forest stands of the caribou's preferred old-growth lichen-bearing forests. While this multi-aged class forest patchwork may contain sufficient lichens to support a caribou herd, it also likely increases caribou predation in the southern Selkirk ecosystem (Stevenson *et al.* 2001, p. 1). Patchwork forest habitats provide suitable habitat for other ungulates such as moose (*Alces alces*), elk (*Cervus elaphus*), and deer (*Odocoileus* spp.) into close proximity with caribou, and consequently support increased number of predators, including mountain lions (*Felis concolor*), wolves (*Canis lupus*), coyotes (*Canis latrans*), wolverines (*Gulo gulo luscus*), black bears (*Ursus americanus*), and grizzly bears (*Ursus arctos*) (Seip and Cichowski 1996, p. 79; Wittmer *et al.* 2005, pp. 414–417).

The southern mountain ecotype of woodland caribou, of which the southern Selkirk Mountains population belongs, prefers high-elevation (over 5,000 ft (1,520 m)) mature to old-growth coniferous forests to limit the effects of predation by spreading out over these large, contiguous areas at high elevations that other ungulate species avoid (Seip and Cichowski 1996, p. 79; MCTAC 2002, pp. 20–21; Cichowski *et al.* 2004, p. 230–231; Kinley and Woods 2006, entire). Residing on large contiguous forest areas, caribou are unprofitable prey (*i.e.,* it is not worth a predator's energy investment to seek out prey when there are so few animals in a large area, which is often in deep snow). To adequately provide for their habitat needs throughout the four seasons of a year, large contiguous areas of mature to old-growth western hemlock/western red cedar forests and subalpine fir and Engelmann spruce forests, and the connecting habitat in-between, are required. In order for the southern Selkirk Mountains population of woodland caribou to be able to use these areas, the habitats need to be connected, particularly during winter when the energy costs of moving through deep snow can be high (Stevenson *et al.* 2001, p. 15).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Arboreal hair lichens are a critical winter food for the southern Selkirk Mountains population of woodland caribou diet, which is composed almost entirely of lichens from November to May (Servheen and Lyon 1989, p. 235; Stevenson *et al.* 2001, p. 1; USFS 2004, p. 18), when lichens represent the only primary food source available (Paquet 1997, p. 13). Lichens are pulled from the branches of conifers, picked from the surface of the snow after being blown out of trees by wind, or are grazed from wind-thrown branches and trees. The two kinds of lichens commonly eaten by the southern Selkirk Mountains population of woodland caribou are *Bryoria* spp. and *Alectoria sarmentosa;* both are most commonly found in high-elevation climax forests on old trees (Paquet 1997, p. 14). These lichens are extremely slow growing, and are typically abundant only in mature or old growth forests (Paquet 1997, p. 2). Relative humidity, wetting and drying cycles, and amount of light are ultimately the controlling factors of lichen growth.

During the spring (MCTAC 2002, p. 11), the southern Selkirk Mountains population of woodland caribou moves to lower elevations where snow has melted, to forage on new green vegetation (Paquet 1997, p. 16). In summer months, the southern Selkirk Mountains population of woodland caribou moves back to mid- and upper-elevation spruce/alpine fir forests (Paquet 1997, p. 16). Summer diets include selective foraging of grasses, flowering plants, horsetails, willow and dwarf birch leaves and tips, sedges, lichens (Paquet 1997, pp. 13, 16), and huckleberry leaves (USFS 2004, p. 18). The fall and early winter diet consists largely of dried grasses, sedges, willow and dwarf birch tips, and arboreal lichens.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

In spring (April 20–July 7), the southern Selkirk Mountains population of woodland caribou moves to areas with green vegetation, which becomes the primary food source. These areas often overlap with early and late winter ranges at elevations where new, green vegetation is appearing (Servheen and Lyon 1989, p. 235; MCTAC 2002, p. 11), which allows the animals to recover from the effects of winter (USFWS 1994, p. 7). Pregnant females will move to these spring habitats for forage, but during the calving season from June 1 to July 7, the need to avoid predators influences habitat selection. Areas selected for calving are typically high-elevation, alpine and nonforested areas in close proximity to old-growth forest ridgetops, as well as high-elevation basins that can be food limited, but are more likely to be predator free (USFWS 1994, p. 8; MCTAC 2002, p. 11; Cichowski *et al.* 2004, p. 232, Kinley and Apps 2007, p. 16). Arboreal lichen becomes the primary food source for pregnant females and females with calves, since green forage is unavailable in these secluded and high-elevation habitats.

Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species

In general, seasonal habitats of the southern Selkirk Mountains population of woodland caribou consist of: (1) Five seasons (early winter, late winter, spring, calving, and summer) (Kinley and Apps 2007, p. 7); and (2) habitats primarily within two vegetation zones (*i.e.,* western hemlock/western red cedar and subalpine fir/Engelmann spruce forests) (USFS 2004, p. 18; USFWS 2008a, p. 20). Early winter is a period of rapid snow accumulation and generally extends from October 17 to January 18 (Kinley and Apps, p. 7). Kinley and Apps (2007, p. 15) reported that during this time caribou in the southern Selkirk Mountains ecosystem are often associated with landscapes dominated by spruce and subalpine fir stands with a forest canopy closure of at least 26–50 percent; and preferred habitats were strongly related to old forests. At a fine scale analysis, a study

by Scott and Servheen (1984, p. 30) that involved ground-tracking six radio-collared caribou from the southern Selkirk Mountains population of woodland caribou reported that habitat selection during early winter seemed to be stand conditions that minimized snow depth with dense canopies of 76–100 percent in old-growth western hemlock/cedar forests with large, lichen-bearing branches. Scott and Servheen (1984, p. 36) reported that the primary selection factor was for habitat types providing snow-free-foraging areas around trees with dense canopy covers at elevations approximately 4,950 feet (1,509 m) and below.

Caribou seek out these more closed-canopy timber stands where they feed on a combination of lichen on wind-thrown trees, and lichens that have fallen from standing trees (litterfall) (MCTAC 2002, p. 10). If available, shrubs and other forbs that remain accessible in snow wells under large trees are also consumed. A conifer canopy that intercepts snow and allows access to feeding sites is important (MCTAC 2002, p. 10) until the snowpack consolidates and the caribou can move to higher elevations (USFS 2004, p. 18). However, these elevational shifts can be quite variable within and between years, depending on snow levels (Apps *et al.* 2001, p. 67; Kinley *et al.* 2007; p. 94). All mountain caribou experience the poorest mobility and food availability of any season during early winter because of the typically deep, soft snow (MCTAC 2002, p. 10).

Late winter generally starts around January 19 and extends to about April 19 (Kinley and Apps, 2007 p. 7). During this time, the snowpack is deep (up to 16 ft (5 m) on ridgetops), and firm enough to support the animal's weight, which allows easier movement. These upper slopes and ridge tops are: (1) Generally higher in elevation; (2) support mature to old stands of subalpine fir and Engelmann spruce; (3) have canopies similar to early winter habitat (generally 26 to 50 percent cover) (Kinley and Apps, 2007, p. 15); and (4) have high levels of arboreal lichen (USFWS 1994, p. 6; MCTAC 2002, p. 10; USFS 2004, p. 18; USFWS 2008a, p. 20).

Increasing levels of winter recreational activities (*e.g.,* snowmobiling) within the southern Selkirk Mountains population of woodland caribou recovery area, which includes the CNF in Washington and IPNF in Idaho, is an emerging threat to the southern Selkirk Mountains population of woodland caribou. The numbers and distribution of recreational snowmobilers has increased over the last 10–15 years, due in part to improved snowmobile technology and the increasing popularity of the sport. Snowmobiling activities have the potential to displace caribou from suitable habitat, resulting in additional energy expenditure by caribou when they vacate an area to avoid disturbance (Tyler 1991, p. 191; Cichowski *et al.* 2004, p. 241). This results in an effective loss of habitat availability temporarily, and potentially for the long term if caribou abandon areas characterized by chronic disturbance.

Spring is usually from around April 20 to July 7 (Kinley and Apps 2007, p. 7), when caribou move to areas that have green vegetation to recover from the effects of winter (Servheen and Lyon 1989, p. 235; USFWS 1994, p. 7). July to around October 16 is considered the summer habitat season for caribou. During both seasons, Kinley and Apps (2007, p. 15) report the southern Selkirk Mountains population of woodland caribou is associated with spruce and subalpine fir that also provides thermal cover, although summer habitat is in higher elevations with a preference for valleys (Kinley and Apps 2007, p. 15), and habitat with high forage availability (USFWS 1994, p. 8). In the Selkirk Mountains, the shallow slopes used in late summer are characteristically high-elevation benches, secondary stream bottoms and riparian areas, and seeps where forage is lush and abundant (Servheen and Lyon 1989, p. 236).

In the fall (generally October 17 into November (Kinley and Apps 2007, p. 7)), the southern Selkirk Mountains population of woodland caribou may gradually move to western hemlock dominated forests as the availability of forage vegetation such as vascular plants disappears. It is during this time of year when the southern Selkirk Mountains population of woodland caribou is making the transition from green forage to arboreal lichens (Servheen and Lyon, 1989, p. 236). As winter nears, the annual cycle of habitat use by the southern Selkirk Mountains population of woodland caribou repeats.

Primary Constituent Elements for the Southern Selkirk Mountains Population of Woodland Caribou

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the southern Selkirk Mountains population of woodland caribou in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the PBFs that provide for a species' specific life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the PBFs and habitat characteristics required to sustain the southern Selkirk Mountains population of woodland caribou's life-history processes, we determine that the primary constituent elements specific to the southern Selkirk Mountains population of woodland caribou are:

i. Mature to old-growth western hemlock (*Tsuga heterophylla*)/western red cedar (*Thuja plicata*) climax forest, and subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest at least 5,000 ft (1,520 m) in elevation; these habitats typically have 26–50 percent or greater canopy closure.

ii. Ridge tops and high-elevation basins that are generally 6,000 ft (1,830 m) in elevation or higher, associated with mature to old stands of subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest, with relatively open (approximately 50 percent) canopy.

iii. Presence of arboreal hair lichens.

iv. High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, and seeps, and subalpine meadows with succulent forbs and grasses, flowering plants, horsetails, willow, huckleberry, dwarf birch, sedges and lichens. The southern Selkirk Mountains population of woodland caribou, including pregnant females, use these areas for feeding during the spring and summer seasons.

v. Corridors/Transition zones that connect the habitats described above. If human activities occur, they are such that they do not impair the ability of caribou to use these areas.

The PBFs for the southern Selkirk Mountains population of woodland caribou are, therefore, the arrangement of the above habitat types and their components and transition zones on the landscape in a manner that supports seasonal movement, feeding, breeding, and sheltering needs. Each of the seasonal use areas creates space on the landscape that allows caribou to spread out and avoid predators. These areas also have little or no disturbance from forest practices, roads, or recreational activities.

With this designation of critical habitat, we define the PBFs essential to the conservation of the species, through the identification of the features' primary constituent elements sufficient to support the life-history processes of the species.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection.

A comprehensive discussion of the threats affecting the species is included in the southern Selkirk Mountains Caribou Population 5-Year Review (USFWS 2008a), the Idaho Comprehensive Wildlife Conservation Strategy (2005), and the Revised Selkirk Mountains Woodland Caribou Recovery Plan (USFWS 1994). The features essential to the conservation of the southern Selkirk Mountains population of woodland caribou, described above, may require special management considerations or protections to reduce the following threats: Habitat fragmentation of contiguous old-growth forests due to forest management practices and activities, wildfire, disturbances such as roads and recreation, and altered predator/prey dynamics.

Special management considerations or protection are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include, but are not limited to, conservation measures and actions to minimize the effects of forest management practices on the PBFs, actions to minimize the potential for wildfire and the implementation of rapid-response measures, as appropriate, when wildfire occurs, road and recreational area closures as appropriate to avoid or minimize the potential for disturbance-related impacts, and reducing opportunities for predator-caribou interactions.

The United States-Canada border in the Selkirk Mountains is remote, rugged, and permeable to the southern Selkirk Mountains population of woodland caribou. Illegal border-related activities and resultant law enforcement response (such as increased human presence, and vehicles including trucks, motorcycles, and all-terrain-vehicles), has the potential to cause adverse effects in these remote areas. While current levels of law enforcement activity do not pose a threat, a substantial increase in activity levels could be of concern. We note that some level of law enforcement activity can be beneficial, as it decreases illegal traffic. Significant increases in illegal cross-border activities in the designated critical habitat areas could pose a threat to the southern Selkirk Mountains population of woodland caribou, and therefore, to a degree, border security actions provide a beneficial decrease in cross-border violations and their impacts. There are no known plans to construct security fences in the designated critical habitat. We do not anticipate impermeable fencing being built in areas with rugged terrain. Technological solutions and other tactics for Homeland Security purposes would be more likely to be applied in these areas.

Existing Conservation Measures

Land and resource management plans (LRMPs) for the IPNF and CNF have been revised to incorporate management objectives and standards to address the above threats, as a result of section 7 consultation between the USFWS and USFS (USFWS 2001a, b). Standards for caribou habitat management have been incorporated into the IPNF's 1987 and CNF's 1988 LRMP, respectively, to avoid the likelihood of jeopardizing the continued existence of the species, contribute to caribou conservation, and ensure consideration of the biological needs of the species during forest management planning and implementation actions (USFS 1987, pp. II–6, II–27, Appendix N; USFS 1988, pp. 4–10–17, 4–38, 4–42, 4–73–76, Appendix I).

These efforts contribute to the protection of the essential PBFs by: (1) Retaining mature to old-growth cedar/hemlock and subalpine spruce/fir stands; (2) analyzing timber management actions on a site-specific basis to consider potential impacts to caribou habitat; (3) avoiding road construction through mature old-growth forest stands unless no other reasonable access is available; (4) placing emphasis on road closures and habitat mitigation based on caribou seasonal habitat needs and requirements; (5) controlling wildfires within southern Selkirk Mountains population of woodland caribou management areas to prevent loss of coniferous species in all size classes; and (6) managing winter recreation in the CNF in Washington, with specific attention to snowmobile use within the Newport/Sullivan Lake Ranger District.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of emergency listing in 1983 (48 FR 1722; January 14, 1983). Information we used to inform this designation includes:

(1) The emergency listing rule (48 FR 1722; January 14, 1983);

(2) The final listing rule (49 FR 7390; February 29, 1984);

(3) The 1985 Management/Recovery Plan for Selkirk Caribou (USFWS 1985) and appendices;

(4) The Revised Recovery Plan for the Selkirk Mountains Woodland Caribou (USFWS 1994);

(5) The Southern Selkirk Mountains Caribou Population 5-Year Review (USFWS 2008a);

(6) The Biological Opinion and Conference Opinion for the Modified Idaho Roadless Rule for USDA Forest Service Regions 1 and 4 (USFWS 2008b);

(7) Biological opinions for the continued implementation of both the Colville National Forest and Idaho Panhandle National Forest Land and Resource Management Plans (USFWS 2001a, b);

(8) Site-specific reports including seasonal habitat models and movement corridor for the southern Selkirk Mountain Woodland Caribou (Kinley and Apps 2007, entire; Wakkinen and Slone 2010, entire);

(9) The Idaho Comprehensive Wildlife Conservation Strategy (2005);

(10) Research published in peer-reviewed articles, academic theses, agency reports, and mapping information from U.S. and Canadian sources;

(11) Peer review and public comments in response to the proposed critical habitat designation; and

(12) The telemetry database compiled by Kinley for the Idaho Department of Lands Critical Habitat Modeling for the South Selkirk Ecosystem (Kinley and Apps 2007) Habitat Suitability Model (HSM) analysis (referred to hereafter as ''telemetry'').

This database incorporated 17 years (1987–2004) of telemetry location coordinates from 117 animals of the southern Selkirk Mountains population of woodland caribou. Telemetry data was collected by the IDFG, Washington Department of Fish and Wildlife, and the Fish and Wildlife Compensation Program (Columbia Basin) in British Columbia, and was used to assess

utilization of the habitats considered for the final critical habitat designation. We also used regional Geographic Information System (GIS) data (such as species occurrence data, land use, elevation, topography, aerial imagery, and land ownership maps) for area calculations and mapping.

In the proposed critical habitat rule (76 FR 74028; November 30, 2011), we identified areas that provide for the conservation of the southern Selkirk Mountains population of woodland caribou based on the geographical area described as the approximate area of normal utilization in the emergency listing rule (48 FR 1722; January 14, 1983) and final listing rule (49 FR 7390; February 29, 1984). The approximate area of normal utilization encompassed approximately 2,396,500 ac (969,829 ha) in both Canada and the United States; 1,405,000 ac (568,583 ha) of which was located within the United States, and included northeast Washington and northern Idaho. Lands managed by the CNF in Washington, the IPNF in Idaho, and some Priest Lake Endowment Lands managed by IDL were included within the boundary of the approximate area of normal utilization described in the above listing rules. In the proposed critical habitat rule, critical habitat boundaries were identified at or above 4,000 ft (about 1,220 m) in elevation, which corresponded to the elevation of the recovery area established in the State of Washington, but is below the 4,500 ft (1,370 m) recovery area established for the State of Idaho. We then overlaid seasonal telemetry radiolocations collected from caribou that were translocated into the southern Selkirk Mountain ecosystems (British Columbia, Idaho, and Washington), from 1987 through 2004 by the IDFG, Washington Department of Fish and Wildlife, and the Fish and Wildlife Compensation Program (Columbia Basin) in British Columbia. To further refine the proposed critical habitat boundaries, we overlaid caribou movement corridors mapped by the IPNF (USFS 2004, pp. 22–23), and results of the seasonal habitat suitability model developed by Kinley and Apps (2007, entire) for the southern Selkirk Mountains ecosystem. Isolated patches and some larger areas were removed because they either lacked PCEs, were adjacent to Schweitzer ski resort, or had relatively low historical utilization based on telemetry data. We included certain areas below the 4,000 ft (about 1,220 m) in elevation where seasonal connectivity between habitats was required. The resulting area encompassed 345,552 ac (139,840 ha), as depicted in the proposed critical habitat rule published on November 30, 2011 (76 FR 74028).

Comments by the Kootenai Tribe, State of Idaho, peer reviewers and other parties suggested methods to refine the proposed critical habitat boundary, including a Habitat Suitability Model (HSM) by Kinley and Apps (2007), and a Migratory Corridor Study (MCS) by Wakkinen and Slone (2010). The HSM was developed to determine the relative quality of an area in terms of the five seasonal habitats that caribou could utilize (early winter, late winter, spring, calving, summer), and is a scale-dependent habitat model for the southern Selkirk Mountains population of woodland caribou. This model is based upon peer-reviewed methodology and has been utilized for 16 other subpopulations of mountain woodland caribou in Canada (Kinley and Apps 2007, p. 23 and Apps *et al.* 2001, entire). Areas were scored from 0 to 1 for each season, based on the probability that the area provided good caribou habitat (Kinley and Apps 2007, p.16). Service GIS staff aggregated the five seasonal GIS layers into one layer keeping the highest score at every location. This output was then filtered to only show areas with a score greater than or equal to 0.5, as HSM scores greater than or equal to 0.5 gave the best prediction of suitable habitat for the southern Selkirk Mountains population of woodland caribou (Kinley and Apps 2007, p16). This filtered layer was used in all of our analysis incorporating HSM.

We assessed various scenarios using the aggregate HSM to show habitat quality captured, and the telemetry points from Kinley and Apps (2007) to infer utilization by caribou. Only HSM areas with a score greater than or equal to 0.5 were considered when assessing scenarios. Acreage and percentage differences between scenarios were made in GIS using the proposed critical habitat (76 FR 74018) as the baseline. For reference purposes, the total HSM greater than or equal to 0.5 within the United States in the final critical habitat rule is 22,178 ac (8,975 ha), and was 151,825 ac (61,441 ha) in the proposed critical habitat rule.

The Kootenai Tribe of Idaho recommended using areas with an HSM score greater than or equal to 0.5 with a minimum patch size of 40 ac (16 ha), combined with the MCS corridors for connectivity. The tribe suggested that areas outside the proposed critical habitat boundary should be included, and that the IPNF's caribou suitable habitat layer (PNF–SH) should be used for assessing suitable habitat. The tribe incorporated an analysis of efficiency of habitat designation based on the percentage of telemetry points or habitat within the proposed critical habitat and their suggested habitat's area. By definition, this scenario captures a very high proportion of high-ranking habitat (99 percent of the HSM greater than or equal to 0.5, and 93 percent of telemetry points). We reviewed this scenario and observed that it did not provide for inter-patch movement. The MCS corridors provided regional connectivity, but 40 patches of habitat remained that were not connected. We also concluded that the HSM was a better measure of habitat quality than PNF–SH. This was because there was limited information available on the PNF–SH model, and the utilization of the HSM for identifying critical habitat was cited by other peer reviewers and commenters, unlike the PNF–SH model.

The State of Idaho and Idaho Department of Fish and Game suggested utilizing the Priority 1 subset of the HSM developed by Kinley and Apps (2007), connected by the MCS corridors with a score greater than or equal to 35, to identify critical habitat. We determined that the HSM Priority 1 areas were inadequate since combined with the suggested corridors, they included only the 63 percent of telemetry points and 39 percent of HSM greater than or equal to 0.5. Also, as Kinley and Apps state (p. 24) the ''locations important for caribou conservation may not be entirely circumscribed by Priority 1, 2 and 3 areas''.

Peer reviewers made a number of suggestions regarding the use of elevation in the delineation of critical habitat. Two peer reviewers suggested elevations above 5,000 ft (1,520 m) should be included, and one identified 4,500 ft (1,370 m) as being important for early winter habitat. The HSM scores, Wakkinen and Slone's corridors, and work by Freddy (1974, 1979) were also forwarded for consideration, with a suggestion that more recent data be incorporated into a new modeling effort. The Kinley and Apps (2007) analysis of telemetry data for defining seasonal cut-dates indicated a mean elevation of approximately 5,500 ft (1,675 m) for the early-winter seasonal-habitat period, which represent the time of year when the southern Selkirk Mountains population of woodland caribou are typically found at the lowest elevation (Kinley and Apps 2007, pp. 7–8). The telemetry database utilized in their analysis indicates that approximately 88 percent of early-winter telemetry data occurred above 5,000 ft (1,520 m), with approximately 71 percent of points occurring above 5,500 ft (1,680 m)

(Wakkinen peer review 2012, p. 3; State of Idaho comment letter 2012, p. 8; Kootenai Tribe comment letter 2012, p. 8). Approximately 94 percent of all the telemetry data (for all seasonal habitat periods) occurred above 5,000 ft (1,520 m) in elevation.

Based on the Kinley and Apps (2007, entire) telemetry database analysis, and after considering all peer review and public comments and information received in response to the proposed critical habitat designation, we revised the critical habitat elevation boundaries from 4,000 ft (1,120 m) in the proposed critical habitat rule to habitats at and above 5,000 ft (1,520 m) elevation in the final rule. We acknowledge one peer reviewer's comment recommending that the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou be at 4,500 ft (1,370 m) elevation. However, the information we evaluated as well as comments received indicate that only habitats at 5,000 ft (1,520 m) in elevation and above are essential to caribou. Our revised designation of areas at and above 5,000 ft (1,520 m) also captures the ecotone described by Art Zack, USFS (pers comm. 2012; see Summary of Comments and Recommendations section), where the cedar/hemlock and subalpine fir habitat types meet or intergrade on the IPNF at approximately 5,100 ft (1,550 m); although where the ecotone break occurs is based on aspect, topography, landform, cold air drainage patterns, and local weather patterns. Similarly, the designation in our final rule includes the average elevational shifts in habitat use by caribou, by season, for the south Selkirk ecosystem (Kinley and Apps 2007, p.3). This elevational range of 5,496 ft (1,675 m) in November (early winter) to about 6,300 ft (1,920 m) in late January (late winter) was based on telemetry data collected from 1987–2004. Scott and Servheen (1984, p. 30) also reported that in early winter the southern Selkirk Mountains population of woodland caribou sought out habitat types providing snow-free foraging areas at elevations approximately 4,950 ft (1,509 m). After considering the best scientific data available, as required under section 4(B)(2) of the Act, we have determined that the areas described by the primary constituent elements and therefore the essential physical and biological features specific to the southern Selkirk Mountains population of woodland caribou above are essential to the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PBFs for the southern Selkirk Mountains population of woodland caribou. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would affect the PBFs in the adjacent critical habitat.

The critical habitat designation is defined by the map presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which the map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2011–0096, on our Internet site *http://www.fws.gov/idaho/SpeciesNews.htm,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

We are designating as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient PBFs to support life-history processes essential for the conservation of the southern Selkirk Mountains population of woodland caribou.

According to Freddy (1974, p. 43), current and historical observations suggest seasonal movement of caribou into the United States most likely during October and November, with return movement into British Columbia from March through June. He also stated that from September 1971 through May 1972, there were several observations of caribou or tracks in the United States, especially in the east spur of the Selkirk Mountains (Freddy 1974, pp. 45–46). An early May 1983 census of probable caribou habitat in British Columbia, Idaho, and Washington revealed a population of 26 animals, including 4 mature bulls, 3 immature bulls, 3 calves, 11 cows, and 5 animals that were either young bulls or cows (IDFG 1983, pers. comm.). A 1983–1984 seasonal distribution study based on telemetry data from six collared caribou concluded that most activity occurred in drainages north of British Columbia Highway 3 (Scott and Servheen 1984, pp. 16–22). In that study, three adult cows, two mature bulls, and one immature bull, were tracked. Of these six caribou, the two mature bulls were collared with radio transmitters during October 1983 (*i.e.,* data from the spring season was not available), the immature bull was illegally killed in the fall of 1983, and a radio collar on one of the adult cows stopped transmitting in the spring of 1984.

Although this study does provide information on occupancy of caribou at the time of listing it does not provide an in-depth understanding of seasonal habitat use within this area at the time of listing. The telemetry data of this study are incomplete, as two of the six caribou collared were no longer transmitting location information, and there are no telemetry data from the majority of the population (*i.e.,* the caribou that were not radio collared). Other than the location information obtained during the augmentation of the southern Selkirk Mountains population of woodland caribou during the 1980s and 1990s, caribou census surveys conducted annually since the early 1990s have been limited to the winter season, when caribou and their tracks are most visible. As stated earlier, Freddy (1974, pp. 43, 45–46), suggested that current and historical use of habitat within the United States occurred throughout most of the year. Although we do not have conclusive data regarding current seasonal use patterns in the area being designated as critical habitat (because year-round surveys are not being conducted), the areas have at minimum been used during winter and other seasons historically, and are essential to the conservation of the southern Selkirk Mountains population of woodland caribou for these purposes.

One unit was designated based on sufficient elements of PBFs being present to support the southern Selkirk Mountains population of woodland caribou life processes. Some areas within the unit contain all of the identified elements of the PBFs and support multiple life processes. Some areas within the unit contain only some elements of the PBFs necessary to support the southern Selkirk Mountains population of woodland caribou's particular use of that habitat.

Final Critical Habitat Designation

We are designating one unit as critical habitat for the southern Selkirk Mountains population of woodland caribou. The critical habitat area described below constitutes our best assessment of areas that meet the definition of critical habitat for the southern Selkirk Mountains population

of woodland caribou. The Selkirk Mountains Critical Habitat Unit is located in Boundary County, Idaho, and Pend Oreille County, Washington. The approximate size and ownership of the Selkirk Mountains Critical Habitat Unit is identified in Table 1. This Unit was occupied at the time of emergency listing in 1983, and at the time of final listing in 1984, and is essential to the conservation of the species.

TABLE 3—DESIGNATED CRITICAL HABITAT FOR THE SOUTHERN SELKIRK MOUNTAINS POPULATION OF WOODLAND CARIBOU

[Area estimates reflect all land within critical habitat unit boundaries, values are rounded to the nearest whole numbers.]

Critical habitat by county	Land ownership by type and acres (hectares)			
	Federal	Private	State	Total
SELKIRK MOUNTAINS CRITICAL HABITAT UNIT Southern Selkirk Mountains Woodland Caribou (*Rangifer tarandus caribou*)				
Boundary County, Idaho	6,029 (2,440)	0	0	6,029 (2,440)
Pend Oreille County, Washington	23,980 (9,705)	0	0	23,980 (9,705)
Unit Total	30,010 (12,145)	0	0	30,010 (12,145)

Note: Totals may not sum due to rounding.

We present a brief description of the Selkirk Mountains Critical Habitat Unit, and reasons why this Unit meets the definition of critical habitat for the southern Selkirk Mountains population of woodland caribou.

Selkirk Mountains Critical Habitat Unit

The Selkirk Mountains Critical Habitat Unit consists of 30,010 ac (12,145 ha) in Boundary County, Idaho and Pend Oreille County, Washington. Lands within this unit are at 5,000 ft (1,520 m) and higher in elevation. These lands are under Federal ownership, within the Colville and Idaho Panhandle National Forests. The Selkirk Mountains Critical Habitat Unit was occupied at the time of both the emergency listing on January 14, 1983 (48 FR 1722), and the final listing in 1984 (49 FR 7390; February 29, 1984), and is essential to the conservation of the species. This area also contains the PBFs essential to the conservation of the southern Selkirk Mountains population of woodland caribou and which may require special management considerations or protection. The primary land uses are forest management activities and recreational activities, which occur throughout the year. Recreational activities include, but are not limited to, snowmobiling, off-highway vehicle (OHV) use, backcountry skiing, and hunting. Special management considerations or protection needed within the unit are required to address habitat fragmentation of contiguous old growth forests due to forest practices and activities, wildfire, and disturbances such as roads and recreation.

Effects of Critical Habitat Designation

Section 7 Consultation

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

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

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

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

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

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the PBFs to an extent that appreciably reduces the conservation value of the critical habitat for the southern Selkirk Mountains population of woodland caribou. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

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

We have identified no specific projects that would be of such scope and magnitude as to destroy or adversely modify critical habitat. However, activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the southern Selkirk Mountains population of woodland caribou, and thus comply with the Act. These activities include, but are not limited to:

(1) Actions that would reduce or remove mature old-growth vegetation (greater than 100–125 years old) within the cedar/hemlock zone and subalpine fir/Engelmann spruce zone at higher elevations stands (at or greater than 5,000 ft (1,520 m)), including the ecotone between these two forest habitats. Such activities could include, but are not limited to, forest stand thinning, timber harvest, and fuels treatment of forest stands. These activities could significantly reduce the abundance of arboreal lichen habitat, such that the landscape's ability to produce adequate densities of arboreal lichen to support persistent mountain caribou populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of old-growth coniferous forest on a scale proportionate to the large landscape used by the southern Selkirk Mountains population of woodland caribou. Such activities could include, but are not limited to, recreational area developments, certain types of mining activities (*e.g.* open-pit mining), and road construction. Such activities could eliminate and fragment mountain caribou and arboreal lichen habitat.

(3) Actions that would increase traffic volume and speed on roads within southern Selkirk Mountains population of woodland caribou critical habitat areas. Such activities could include, but are not limited to, transportation projects to upgrade roads or development, or development of a new tourist destination. These activities could reduce connectivity within the old-growth coniferous forest landscape for mountain caribou.

(4) Actions that would increase recreation in southern Selkirk Mountains population of woodland caribou critical habitat. Such activities could include, but are not limited to, recreational developments that facilitate winter access into mountain caribou habitat units, or management activities that increase recreational activities within designated critical habitat throughout the year, such as snowmobiling, OHV use, and backcountry skiing. These activities have the potential to displace the southern Selkirk Mountains population of woodland caribou from suitable habitat or increase their susceptibility to predation. Displacement of caribou may result in: (1) Additional energy expenditure when they vacate an area to avoid disturbance, at a time when their energy reserves are already low; (2) an effective temporary loss of available habitat; and (3) potential long-term habitat loss if they abandon areas affected by chronic disturbance.

The southern Selkirk Mountains population of woodland caribou strongly prefers old-growth forests to young forests in all seasons. In designated critical habitat, management actions that alter vegetation structure or condition in young forests over limited areas may not represent an adverse effect to caribou critical habitat. However, an adverse effect could result if these types of management activities reduce and fragment areas in a manner that creates a patchwork of different age classes or prevents young forests from achieving old-growth habitat characteristics. For example, a commercial thinning or fuels reduction project in a young forest that may affect, but would not be likely to adversely affect critical habitat would not require formal consultation. However, a commercial thinning or fuels reduction project conducted within an old-growth forest that may affect, and would be likely to adversely affect, critical habitat would require formal consultation. As discussed in response to Comment 60, Federal agencies should examine the scale of their activities to determine whether direct or indirect alteration of habitat would occur to an extent that the value of critical habitat for the conservation of the mountain caribou would be appreciably diminished.

Actions with no effect on the PCEs and physical and biological features of critical habitat for the southern Selkirk Mountains population of woodland caribou do not require section 7 consultation, although such actions may still have adverse or beneficial effects on the species itself that require consultation. Examples of these actions may include: routine trail and road maintenance (using native aggregate, blading of forest road surfaces, dust abatement), resource surveys such as timber stand exams, limited recreation on established trails and dispersed sites, and routine border security and surveillance. Although each of these activities would not be likely to result in adverse effects or adverse modifications to critical habitat for the southern Selkirk Mountains population of woodland caribou, they may require section 7 consultation to insure they are not likely to jeopardize the continued existence of the species.

Section 9(a)(1) of the Act identifies prohibited activities with regard to endangered wildlife species listed pursuant to section 4 of the Act, which includes unlawful ''take.'' Section 3(19) of the Act defines ''take'' to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Harm in the definition of ''take'' in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering (46 FR 54750; November 4, 1981). Therefore, the southern Selkirk Mountains population of woodland caribou is protected by the Act both within and outside of designated critical habitat areas. Outside of designated critical habitat, the Service will continue to work with our Federal partners to conserve the southern Selkirk Mountains population of woodland caribou pursuant to sections 7(a)(1) and 7(a)(2) of the Act.

Exemptions

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

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

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

(2) A statement of goals and priorities;

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

(4) A monitoring and adaptive management plan.

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

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

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. Therefore, we are not exempting lands from this final designation of critical habitat for the southern Selkirk Mountains population of woodland caribou pursuant to section 4(a)(3)(B)(i) of the Act.

Exclusions

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

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

Under section 4(b)(2) of the Act, the Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

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 DEA of the proposed critical habitat designation and related factors (Industrial Economics, 2012). The draft economic analysis, dated May 2, 2012, was made available for public review from May 31 through July 2, 2012 (77 FR 32075). Following the close of the comment period, a final economic analysis (FEA), of the potential economic effects of the designation was developed, taking into consideration the public comments and new information.

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for the southern Selkirk Mountains population of woodland caribou; 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 proposed rule that was published on November 30, 2011 (76 FR 74018) identified approximately 375,562 acres (151,985 hectares) as critical habitat in Boundary and Bonner Counties in Idaho, and Pend Orielle County in

Washington. The proposed designation included 222,971 ac (90,233 ha) of Federal land, 65,218 ac (26,393 ha) of State land, and 15,379 ac (6,223 ha) of private land in Bonner and Boundary Counties, Idaho, and 71,976 ac (29,128 ha) of Federal land in Pend Orielle County, Washington. The final rule removes approximately 345,552 ac (139,603 ha) that do not meet the definition of critical habitat under section 3(5)(A) of the Act. The final rule designates approximately 30,010 acres (12,145 hectares) of critical habitat on Federal lands within the Colville National Forest and Salmo-Priest Wilderness Area in Pend Oreille County, Washington, and the Idaho Panhandle (Kaniksu) National Forest in Boundary County, Idaho. The areas being designated are within the geographical area occupied by the species at the time of listing, are essential to the conservation of the species, and are managed by the U.S. Forest Service.

Incremental impacts resulting from the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou are limited to the additional effort required to address adverse modification in consultations undertaken by USFS in the IPNF and CNF. The FEA forecasts about one formal and informal section 7 consultation annually over the next 20 years. The 20-year timeframe applied in the economic analysis is chosen as the Office of Management and Budget (OMB) indicates that a standard time period of analysis is 10 to 20 years, and rarely exceeds 50 years. This analysis does not forecast additional project modifications associated with this designation. The reasonably foreseeable incremental impacts quantified in this analysis and attributable to the critical habitat designation are limited to the administrative costs of considering adverse modification during section 7 consultation with the Service. The potential incremental administrative costs resulting from the critical habitat designation are as follows:

(1) Idaho Panhandle National Forest: $135,000 from 2012 to 2031, or $11,900 annually, discounted at seven percent.

(2) Colville National Forest and Salmo-Priest Wilderness Area: $105,000 from 2012 to 2031, or $9,230 annually, discounted at seven percent.

(3) Other Federal agencies: $6,400 from 2012 to 2031, or $564 annually, discounted at seven percent (U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, U.S. Customs and Border Protection).

(4) Project Modifications: Due to extensive baseline protections of the caribou, no incremental project modifications are anticipated.

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 primarily associated with timber harvests; fire, fire suppression, forest management practices; and recreational activities and development. Decision-makers 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 1984 (the year of the final listing rule) (49 FR 7390; February 29, 1984), and considers 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.

In summary, the incremental effects of the designated critical habitat for caribou are limited by the relatively large overlap the designation has with the existing habitat-based consultation framework for actions having already undergone section 7 consultations for the effects to the species under the jeopardy standard. The FEA did not identify any disproportionate incremental costs that are likely to result from the designation. Consequently, the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the southern Selkirk Mountains population of woodland caribou based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Idaho Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov* (search for docket number FWS–R1–ES–2011–0096).

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 (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. U.S. Customs and Border Protection (CBP) is tasked with maintaining National Security interests along the nation's international borders. As such, CBP activities may qualify for exclusions under section 4(b)(2) of the Act. CBP has not identified specific areas within the designated critical habitat that should be considered for exclusion at this time. Since neither DOD nor CBP have identified areas within the designated critical habitat for exclusion, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts 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.

In preparing this final rule, we have determined that there are currently no HCPs or other non-federal management plans for the southern Selkirk Mountains population of woodland caribou. Although the final designation does not include any tribal lands, it includes fish, wildlife, and other natural and cultural resources of the tribes, including rights reserved under treaty and other laws, policies, and orders. Similarly, the designation of critical habitat for the southern Selkirk Mountains population of woodland caribou does not establish any closures, or restrictions on use or access to areas designated as critical habitat, including those areas reserved by the tribes. We anticipate no impact on tribal lands, partnerships, or HCPs from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the southern Selkirk Mountains population of woodland caribou will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* timber, recreation, and other activities). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the southern Selkirk Mountains population of woodland caribou. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our FEA of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the southern Selkirk Mountains population of woodland caribou and the designation of critical habitat. The analysis evaluates the potential for economic impacts related to: (1) Timber harvests; (2) Fire, fire suppression, and forest management practices; and (3) Recreational activities and development.

However, as stated earlier, the final rule removes approximately 345,552 ac (139,603 ha) that do not meet the definition of critical habitat under section 3(5)(A) of the Act (*i.e.,* the areas removed are not essential to the conservation of the species). The final rule designates approximately 30,010 acres (12,145 hectares) of critical habitat on Federal lands within the Colville National Forest and Salmo-Priest Wilderness Area in Pend Oreille County, Washington, and the Idaho Panhandle (Kaniksu) National Forest in Boundary County, Idaho. The areas being designated are within the geographical area occupied by the species at the time of listing, are essential to the conservation of the species, and managed by the U.S. Forest Service. As Federal agencies, the USFS, and U.S. Customs and Border Protection are not considered small entities. These Federal entities are expected to bear all of the incremental administrative costs of section 7 consultation and therefore, we do not anticipate small entities to be either directly regulated or significantly affected by this designation.

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

substantial number of small entities, and a regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

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

The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the FEA (Industrial Economics 2012, ES–8, Appendix A), energy-related impacts associated with the southern Selkirk Mountains population of woodland caribou conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

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

(2) We do not believe that this rule will significantly or uniquely affect small governments 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 for the southern Selkirk Mountains population of woodland caribou occurs primarily on Federal land, and imposes no obligations on State or local governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the southern Selkirk Mountains population of woodland caribou in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the southern Selkirk Mountains population of woodland caribou does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in Idaho. We received comments from the Idaho Office of Species Conservation that included comments from IDFG, IDL, and IDPR and have addressed them in the Summary of Comments and Recommendations section of the rule. The designation of critical habitat in areas currently occupied by the southern Selkirk Mountains population of woodland caribou imposes no additional restrictions to those currently in place and, therefore, has 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 PBFs essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

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

critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the southern Selkirk Mountains population of woodland caribou. The designated areas of critical habitat are presented on a map, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

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

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

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

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by the southern Selkirk Mountains population of woodland caribou at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the southern Selkirk Mountains population of woodland caribou that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the southern Selkirk Mountains population of woodland caribou on tribal lands.

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 **FOR FURTHER INFORMATION CONTACT**).

Author(s)

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. In § 17.11(h), revise the entry for ''Caribou, woodland'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS.							
*	*	*	*	*	*	*	
Caribou, woodland	*Rangifer tarandus caribou.*	Canada, U.S. (AK, ID, ME, MI, MN, MT, NH, VT, WA, WI).	Canada (southeastern British Columbia bounded by the Canada-U.S. border, Columbia River, Kootenay River, Kootenay Lake, and Kootenai River), U.S. (ID, WA).	E	128E, 136, 143	17.95(a)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.95, amend paragraph (a) by adding an entry for ''Woodland caribou, (*Rangifer tarandus caribou)*, Southern Selkirk Mountains Population'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Woodland Caribou (*Rangifer tarandus caribou*) Southern Selkirk Mountains Population

(1) A critical habitat unit is depicted for Boundary County, Idaho, and Pend Oreille County, Washington, on the map below.

(2) Within this area, the primary constituent elements of the physical and biological features essential to the conservation of the southern Selkirk Mountains population of woodland caribou consist of five components:

(i) Mature to old-growth western hemlock (*Tsuga heterophylla*)/western red cedar (*Thuja plicata*) climax forest, and subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest at least 5,000 ft (1,520 m) in elevation; these habitats typically have 26–50 percent or greater canopy closure.

(ii) Ridge tops and high elevation basins that are generally 6,000 ft (1,830 m) in elevation or higher, associated with mature to old stands of subalpine fir (*Abies lasiocarpa*)/Engelmann spruce (*Picea engelmanni*) climax forest, with relatively open canopy.

(iii) Presence of arboreal hair lichens.

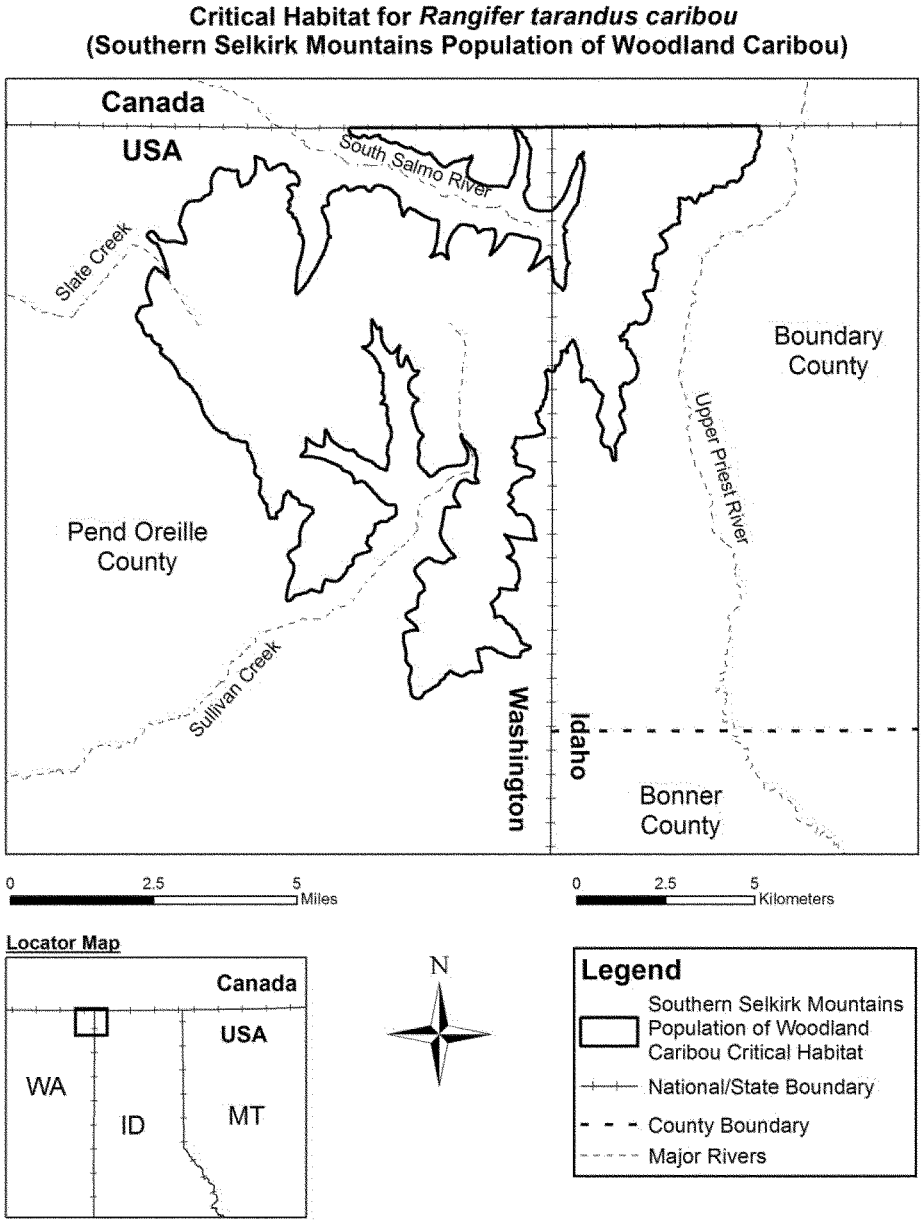
(iv) High-elevation benches and shallow slopes, secondary stream bottoms, riparian areas, and seeps, and subalpine meadows with succulent forbs and grasses, flowering plants, horsetails, willow, huckleberry, dwarf birch, sedges and lichens. The southern Selkirk Mountains population of woodland caribou, including pregnant females, uses these areas for feeding during the spring and summer seasons.

(v) Corridors/Transition zones that connect the habitats described above. If human activities occur, they are such that they do not impair the ability of caribou to use these areas.

(3) Critical habitat does not include manmade structures (such as buildings, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on December 28, 2012.

(4) *Critical habitat map unit.* Data layers defining the map unit were created using a 5,000-ft (1,520-m) elevation layer derived from 30m USGS DEM plus migration-corridor polygons, and units were then mapped using Universal Transverse Mercator (UTM) Zone 11N coordinates. The map in this entry establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the field office Internet site (*http://www.fws.gov/idaho*), at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2011–0096, and at the Service's Idaho Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Unit 1: Boundary County, Idaho, and Pend Oreille County, Washington. The map of the critical habitat unit follows:



* * * * *

Dated: November 14, 2012.

Rachel Jacobson,

Principal Deputy Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–28512 Filed 11–27–12; 8:45 am]

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