

insufficient to incent any action by utilities, as required by Congress. Therefore, commenters should provide specific, compelling reasons if they oppose the NOPR proposal regarding the duration of the incentive and the amount added to a utility's ROE.

8. Finally, I note that for years now, the White House, the U.S. Congress, and senior government leaders have sounded the alarm on increasing cybersecurity threats and their sophistication.<sup>17</sup> I also note that the Commission began assessing the potential use of incentives to improve cybersecurity prior to the passage of the Infrastructure Act.<sup>18</sup> While we are terminating the proceeding in Docket No. RM21-3-000, I am heartened that the Commission remains committed to this issue. I look forward to examining all the comments as we seek to issue a final rule around these topics.

For these reasons, I respectfully concur.

**Willie L. Phillips**

*Commissioner*

[FR Doc. 2022-21003 Filed 10-5-22; 8:45 am]

**BILLING CODE 6717-01-P**

<sup>17</sup> For example, President Biden told utilities and other companies that "critical infrastructure owners and operators must accelerate efforts to lock their digital doors." See *Statement by President Biden on Our Nation's Cybersecurity*, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/21/statement-by-president-biden-on-our-nations-cybersecurity>. President Biden has also since announced an executive order on cybersecurity and is using funds from the Infrastructure Act to provide grants to state, local, and territorial governments as they respond to cyber threats. See Exec. Order No. 14,028, 86 FR 26633 (2021). Former President Obama declared that cybersecurity threats are "the most serious economic and national security challenge[] we face as a nation" and that "America's economic prosperity . . . will depend on cybersecurity." See National Security Council, *Cyber Security*, available at: <http://www.whitehouse.gov/administration/eop/nsc/cybersecurity>. Former Defense Secretary Leon Panetta warned that the country is "increasingly vulnerable to foreign computer hackers who could dismantle the nation's power grid." See Elizabeth Bumiller and Thom Shanker, *Panetta Warns of Dire Threat of Cyberattacks on U.S.*, The New York Times, October 11, 2021, available at: <http://www.nytimes.com/2012/10/12/world/panetta-warns-of-dire-threat-of-cyberattack.html?pagewanted=all>.

<sup>18</sup> See, e.g., FERC, *Cybersecurity Incentives Policy White Paper*, Docket No. AD20-19-000, (June 2020), available at: <https://www.ferc.gov/sites/default/files/2020-06/notice-cybersecurity.pdf> (discussing the potential new framework for providing transmission incentives to utilities for cybersecurity investments); *Cybersecurity Incentives*, 87 FR 4173 (Jan. 27, 2021), 173 FERC ¶ 61,240 (2020) (proposing to allow utilities to request incentives for certain cybersecurity investments that go above and beyond the requirements of the CIP reliability standards). This NOPR supersedes the *Cybersecurity Incentives* NOPR, but it illustrates my colleagues' commitment to building out a more resilient electric system.

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2021-0166; FF09E21000 FXES1111090FEDR 223]

RIN 1018-BE91

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Louisiana Pinesnake

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Louisiana pinesnake (*Pituophis ruthveni*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 209,520 acres (84,790 hectares) in Bienville, Grant, Rapides, and Vernon parishes, Louisiana, and in Newton, Angelina, and Jasper Counties, Texas, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the Louisiana pinesnake.

**DATES:** We will accept comments received or postmarked on or before December 5, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 21, 2022.

**ADDRESSES:**

*Written comments:* You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2021-0166, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2021-0166, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above.

We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Availability of supporting materials:* The coordinates or plot points or both from which the maps are generated are included in the decision file for this proposed critical habitat designation and are available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2021-0166 and on the Service's website, at <https://www.fws.gov/office/louisiana-ecological-services/library>. Additional supporting information that we developed for this proposed critical habitat designation will be available on the Service's website, at <https://www.regulations.gov>, or both.

**FOR FURTHER INFORMATION CONTACT:**

Brigette Firmin, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Louisiana Ecological Services Field Office, 200 Dulles Drive, Lafayette, LA 70506; telephone 337-291-3100. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species 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. Designation and revisions of critical habitat can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process.

*What this document does.* We propose to designate critical habitat for the Louisiana pinesnake, which is listed as a threatened species.

*The basis for our action.* Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing, to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the

species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

*Draft economic analysis of the proposed designation of critical habitat.* In order to consider the economic impacts of designating critical habitat for the Louisiana pinesnake, we compiled information pertaining to the potential incremental economic impacts for this proposed critical habitat designation. The information we used in determining the economic impacts of the proposed critical habitat is summarized in this proposed rule (see *Consideration of Economic Impacts*, below) and is available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2021-0166 and at the Louisiana Field Office at (see **FOR FURTHER INFORMATION CONTACT**). We are soliciting public comments on the economic information provided and any other potential economic impact of the proposed designation. We will continue to reevaluate the potential economic impacts between this proposal and our final designation.

*Peer review.* We are seeking comments from independent specialists to ensure that our proposal is based on scientifically sound data and analyses. We have invited four peer reviewers to comment on our specific assumptions and conclusions in this proposed rule.

### Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as

reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species’ habitat or range is not a threat to the species, or whether any areas meet the definition of “critical habitat.”

(2) Specific information on:

(a) The amount and distribution of Louisiana pinesnake habitat;

(b) What areas occurring within the range of the species, in Louisiana and Texas, should be included in the designation because they (i) were occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) were unoccupied at the time of listing and are essential for the conservation of the species; and

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(5) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act, in particular for those lands managed under a Service-approved plan (*e.g.*, safe harbor agreement, candidate conservation agreement, or other land management plan). If you think we

should exclude any additional areas, please provide information supporting a benefit of exclusion.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. If you request exclusion of a particular area or areas from the final designation, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting the benefit of exclusion of that particular area.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific information available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Because we will consider all comments and information we receive during the comment period, our final critical habitat designation may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of

exclusion outweigh the benefits of inclusion.

#### Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in-person or virtually (via webinar). We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

#### Previous Federal Actions

On October 6, 2016, we published in the **Federal Register** (81 FR 69454) a proposed rule to list the Louisiana pinesnake as a threatened species under the Act. In that proposed rule, we determined that critical habitat was prudent but not determinable because we lacked specific information on the impacts of our designation. On April 6, 2018, we published in the **Federal Register** (83 FR 14958) our final rule to list the Louisiana pinesnake as a threatened species under the Act. In that final rule, we stated that we were in the process of obtaining information on the impacts of critical habitat designation for the species.

On April 6, 2018, we published in the **Federal Register** (83 FR 14836) a proposed rule to adopt a species-specific rule under section 4(d) of the Act (a “4(d) rule”) to provide for the conservation of the Louisiana pinesnake. On February 27, 2020, we published in the **Federal Register** (85 FR 11297) the final 4(d) rule for the species.

All other previous Federal actions are described in the October 6, 2016, proposed rule (81 FR 69454).

#### Supporting Documents

A Service biologist prepared an SSA report for the Louisiana pinesnake in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review

published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of 8 appropriate specialists regarding the SSA. We received 4 responses.

#### Background

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species. In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species’ critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019).

However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity v. Haaland*, No. 4:19-cv-05206-JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD v. Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical habitat decisions. Accordingly, in developing the analysis contained in this proposal, we applied the pre-2019 regulations, which may be reviewed in the 2018 edition of the Code of Federal Regulations at 50 CFR 424.02 and 424.12(a)(1) and (b)(2). Because of the ongoing litigation regarding the court’s vacatur of the 2019 regulations, and the resulting uncertainty surrounding the legal status of the regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on <https://www.regulations.gov>, concluded that we would have reached the same proposal if we had applied the 2019 regulations because under either regulatory scheme we find that critical habitat is prudent for the Louisiana pinesnake and that unoccupied critical habitat is essential for the conservation of the species. With a low number of extant populations and threats of habitat loss from land use change, lack of prescribed fire, and synergistic effects from mortality due to vehicle strikes and predators acting on

vulnerable, reduced populations, areas of unoccupied habitat were determined essential for the conservation of the species. It is reasonably certain that the unoccupied unit will contribute to the conservation of the species by providing additional areas for Louisiana pinesnake recovery actions, including population establishment, and the unoccupied unit contains one or more of the physical or biological features that are essential to the conservation of the species and it has the abiotic and biotic features that currently or periodically contain the resources and conditions necessary to support one or more life processes of the Louisiana pinesnake.

On September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court’s July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (*In re: Cattlemen’s Ass’n*, No. 22–70194). The effect of the stay is that the 2019 regulations are currently the governing law. Because a court order requires us to submit this proposal to the **Federal Register** by September 30, 2022, it is not feasible for us to revise the proposal in response to the Ninth Circuit’s decision. Instead, we hereby adopt the analysis in the separate memo that applied the 2019 regulations as our primary justification for the proposal. However, due to the continued uncertainty resulting from the ongoing litigation, we also retain the analysis in this preamble that applies the pre-2019 regulations and we conclude that, for the reasons stated in our separate memo analyzing the 2019 regulations, this proposal would have been the same if we had applied the 2019 regulations.

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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species’ occurrences, as determined by the Secretary (*i.e.*, range). Such areas may

include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (e.g., migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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 also 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement "reasonable and prudent alternatives" to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require

special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

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.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific 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 species status assessments for the species; any generalized conservation strategy, criteria, or outline that may have been developed for the species; 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. 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 ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. 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 the 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 those planning efforts calls for a different outcome.

#### **Prudency Determination**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of "critical habitat."

In the final listing rule (83 FR 14958; April 6, 2018), no imminent threat of take attributed to collection or vandalism under Factor B was identified for the Louisiana pinesnake, and identification and mapping of critical habitat is not expected to initiate any such threat. Additionally, in the

final listing rule, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to this species, primarily due to silviculture practices incompatible with providing open pine conditions over time, fire suppression, road and right-of-way construction, and urbanization. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met, we have determined that the designation of critical habitat is prudent for the Louisiana pinesnake.

### Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Louisiana pinesnake is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

- (i) Data sufficient to perform required analyses are lacking; or
- (ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of “critical habitat.”

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

When we published the proposed listing rule (81 FR 69454; October 6, 2016) and final listing rule (83 FR 14958; April 6, 2018) for the Louisiana pinesnake, specific information needed to perform the required analysis of the impacts of designation was lacking, such as information on areas to be proposed for designation and the potential economic impacts associated with designation of these areas, leading us to find that critical habitat was not determinable. We continued to review the available information related to the draft economic analysis, as well as newly acquired biological information necessary to perform this assessment. This and other information represent the best scientific data available, and we now find the data are sufficient for us to analyze the impacts of critical habitat designation. Accordingly, we conclude that the designation of critical habitat is determinable for the Louisiana pinesnake.

### Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat within the geographical area occupied

by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features” as the features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or absence or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Details on habitat characteristics for the Louisiana pinesnake can be found in the proposed listing rule (81 FR 69454; October 6, 2016) and final listing rule (83 FR 14958; April 6, 2018). We summarize below the more important habitat characteristics, particularly those that support the description of

physical or biological features essential to the conservation of the Louisiana pinesnake.

### *Habitat Representative of the Historical, Geographical, and Ecological Distributions of the Species*

The Louisiana pinesnake occurs in a disjunct portion of the historical southeastern U.S. longleaf-dominated pine ecosystem in west-central Louisiana and east Texas (Conant 1956, p. 19; Reichling 1995, p. 186). Much of the natural longleaf pine habitat has been lost or degraded through historical conversion to intensive pine plantation and suppression of the naturally occurring fire regime. As a result, Louisiana pinesnake habitat now occurs in smaller, isolated patches of open-canopy forests dominated by longleaf pine or other pine species. These habitats include species such as longleaf, shortleaf, slash, or loblolly pines with a sparse midstory, and well-developed herbaceous groundcover dominated by grasses and forbs (Young and Vandeventer 1988, p. 204; Rudolph and Burgdorf 1997, p. 117). Louisiana pinesnakes are found in pine habitats characterized by relatively few (<10) large trees (greater than 10 inches (in) (25 centimeters (cm)) diameter at breast height) and abundant light penetration (Himes et al. 2006, pp. 108–110, 113).

### *Space for Individual and Population Growth and for Normal Behavior*

A broad distribution of home range sizes for the Louisiana pinesnake has been estimated from telemetry studies. Louisiana pinesnakes are semi-fossorial and diurnal, and move relatively small distances (495–3,802 feet (ft) (150–1,159 meters (m)) (Himes 1998, p. 18; Ealy et al. 2004, pp. 390–391). The maximum distance across a home range for an individual Louisiana pinesnake is 2.1 kilometers (km) (1.3 miles (mi)) (Sperry 2018, unpub. data). The species has a relatively small average home range size, although there is extensive variation among individuals in behavior and habitat (Sperry et al. 2021, p. 273). Using a method to determine the species’ home range boundaries by connecting the outer location points, adult Louisiana pinesnake home range estimates range from 16 acres (ac) (6.5 hectares (ha)) to 412.2 ac (166.8 ha) (Himes 1998, p. 18; Himes et al. 2006, p. 108; Sperry et al. 2021, pp. 273, 288), with an average home range of 124 ac (50 ha). Adult Louisiana pinesnake males typically have larger home ranges than adult females, and adult snakes have larger home ranges than juveniles (Himes et al. 2006, pp. 18, 107). In addition, individual Louisiana

piresnake home ranges may partially or nearly completely overlap with other individuals' home ranges, irrespective of sex (Sperry et al. 2021, p. 275).

The minimum amount of habitat necessary to support a sustainable Louisiana pinesnake population has not been determined. However, a related species, the Florida pinesnake (*Pituophis melanoleucus mugitus*), requires a minimum of approximately 7,413 ac (3,000 ha) of suitable habitat as determined by calculating the area of non-overlapping home ranges of 50 Florida pinesnakes (Miller 2008, pp. 27–28). To calculate a potential minimum area required for a Louisiana pinesnake population using a similar methodology, we considered several factors including minimum effective population size and average home range size. A population of 50 individuals has been proposed as a minimum effective population size for many vertebrate species, and we use this value in our calculations of potential minimum area requirement (Franklin 1980, p. 147). A ratio of 0.58 of the effective population size to population size ( $N_e/N$ ) represented the greatest effective population size for a given population size that included the most comprehensive suite of pertinent data and was similar to other animals with low fecundity (Frankham 1997, p. 99). To develop a potential minimum area required by the Louisiana pinesnake, we estimated an actual population size by applying this ratio to the 50  $N_e$  value from Franklin (1980), which yielded an estimated actual population size of 86 individuals for the Louisiana pinesnake. Using the calculated actual population size, we adjusted the population areal minimum analysis from Miller (2008) to use species-appropriate partially overlapping polygons (instead of non-overlapping) of 124 ac (50 ha) as the mean home range for Louisiana pinesnake. This modeling exercise used varying degrees of overlap among the polygons and yielded total estimates between 5,312 to 10,625 ac (2,150 to 4,300 ha). When each home range partially overlapped four neighboring home ranges, we determined approximately 7,166 ac (2,900 ha) was the minimum area needed for a Louisiana pinesnake population. This estimate assumes that the area is composed of mostly unfragmented, suitable habitat; more area may be necessary to meet the Louisiana pinesnake's life-history needs if the habitat is in less suitable condition.

This calculated minimum required habitat area estimate is analogous to the area needed by the threatened eastern indigo snake (*Drymarchon couperi*), a

large-bodied, wide-ranging snake that is also a longleaf pine ecosystem specialist. Although the eastern indigo snake's average home range sizes are larger than that of the Louisiana pinesnake, sizeable areas are needed to support large, wide-ranging snake species sensitive to landscape fragmentation. For example, tracts of 2,500 to 10,000 ac (1,012 to 4,047 ha) of suitable habitat should be maintained in order to have a high probability of sustaining eastern indigo snake populations of varying sizes long-term (Moler 1992, p. 185; Sytsma et al. 2012, pp. 39–40). Thus, based on the best available information regarding long-distance movement and home range size for the Louisiana pinesnake, we determined that 7,166 ac (2,900 ha) of open-canopy pine forest habitat is an appropriate estimate of the minimum area to meet the life-history requirements of a Louisiana pinesnake population.

Unlike some snake species whose wintering areas may be located some distance from areas used during the rest of the year or may differ substantially in habitat type, the Louisiana pinesnake remains within its home range and does not migrate or require seasonally unique habitat (Rudolph et al. 2007, p. 561; Pierce et al. 2014, p. 140). During the winter, Louisiana pinesnakes primarily use Baird's pocket gopher (*Geomys breviceps*) underground burrows as hibernacula (Rudolph et al. 2007, p. 561; Pierce et al. 2014, p. 140). Louisiana pinesnake activity varies seasonally, with most activity March to May and September to November (with activity peaking in November), and least activity December to February and during the summer (particularly August) (Himes 1998, p. 12).

Most of the information known about the life-history requirements of the Louisiana pinesnake comes from studies and observations of adult individuals. Life-history requirements specific to hatchlings and juveniles (generally less than 47 in (120 cm) total length) are largely unknown, and we assume requirements are relatively similar to those of adults. Accordingly, habitat characteristics that support adult Louisiana pinesnakes also support hatchling and juvenile snakes. Therefore, no specific physical or biological features unique to hatchlings or juveniles have been identified.

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

#### Food—Prey and Vegetation

Louisiana pinesnakes rely on Baird's pocket gopher as a primary prey item and also use gopher burrows as refugia and hibernacula. The Louisiana pinesnake and Baird's pocket gopher are strongly associated and occur together in upland pine habitats with herbaceous vegetation, areas with nonexistent or sparse midstory, and a low pine basal area (Rudolph and Burgdorf 1997, p. 117; Ealy et al. 2004, p. 389; Himes et al. 2006, pp. 110, 112; Wagner et al. 2017, p. 22). Habitat selection by the Louisiana pinesnake is determined, in part, by the abundance and distribution of pocket gophers and their burrow systems (Rudolph and Burgdorf 1997, p. 117). The Baird's pocket gopher requires well-drained, sandy soils with low clay content in the topsoil for burrow construction and a diverse herbaceous (non-woody) plant community with adequate forbs (non-grass herbaceous vegetation) that provide forage (Davis et al. 1938, p. 414).

The Baird's pocket gopher comprises an estimated 53 percent of individual prey items and 75 percent of total prey biomass for Louisiana pinesnakes (Rudolph et al. 2002, p. 58; Rudolph et al. 2012, p. 243). The Louisiana pinesnake also consumes other mammals that occur in pine habitats, including eastern moles (*Scalopus aquaticus*), cotton rats (*Sigmodon hispidus*), deer mice (*Peromyscus* sp.), and harvest mice (*Reithrodontomys* sp.) (Rudolph et al. 2002, p. 59; Rudolph et al. 2012, p. 244). These smaller animals may also be the preferred prey items for juvenile Louisiana pinesnakes; however, Louisiana pinesnakes have the largest hatchling size in the genus, giving young snakes an advantage in ingesting larger prey like pocket gophers at a younger age compared to other co-occurring snake species.

As well as serving as prey items, Baird's pocket gophers also create the burrow systems in which Louisiana pinesnakes are most frequently found (Rudolph and Conner 1996, p. 2; Rudolph and Burgdorf 1997, p. 117; Himes 1998, p. 42; Rudolph et al. 1998, p. 146; Rudolph et al. 2002, p. 62; Himes et al. 2006, p. 107). Louisiana pinesnakes use pocket gopher burrow systems as nocturnal and diurnal refugia and winter hibernacula, and to escape from predators and fire (Rudolph and Burgdorf 1997, p. 117; Rudolph et al. 1998, p. 147; Ealy et al. 2004, p. 386; Rudolph et al. 2007 p. 561; Pierce et al. 2014, p. 140). Active Louisiana

piresnakes occasionally use debris, logs, and low vegetation as temporary surface shelters, and decayed or burned stumps, or nine-banded armadillo (*Dasyurus novemcinctus*) burrows, as underground refugia (Rudolph and Burgdorf 1997, p. 117; Himes 1998, p. 26; Ealy et al. 2004, pp. 386, 389).

In summary, the Louisiana pinesnake relies on Baird's pocket gophers as a primary prey item and uses pocket gopher burrows as refugia and hibernacula. Therefore, based on the information in the previous paragraphs, we identify adequate Baird's pocket gopher populations as a necessary biological feature for the species.

#### Soil Characteristics

Louisiana pinesnakes occur most often in sandy soils within open-canopy pine forest habitat (Wagner et al. 2014, p. 152). In addition to suitable forest structure and herbaceous vegetation, specific soil characteristics are an important determinant of Louisiana pinesnake occurrence (Wagner et al. 2014, entire). These well-drained soil types are characterized by a high sand content and a low water table (Duran 2010, p. 11; Wagner et al. 2014, p. 152). Louisiana pinesnakes are efficient burrowers, as indicated by the species' pointed snout and large rostral scale on the tip of the nose (Conant and Collins 1991, pp. 201–202). In addition, Louisiana pinesnakes can excavate their own burrows, although they are closely associated with pocket gopher burrow systems. The Louisiana pinesnake's preferred prey, pocket gophers, also prefer well-drained, sandy soils with low clay content in the topsoil (Davis et al. 1938, p. 414).

#### Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Louisiana pinesnake from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule (81 FR 69454; October 6, 2016) and final listing rule (83 FR 14958; April 6, 2018). We have determined that the following physical or biological features are essential to the conservation of the Louisiana pinesnake:

(i) Upland natural pine habitats that contain open-canopy stands of longleaf, shortleaf, slash, or loblolly pine trees that have:

- (A) Low midstory tree density;
- (B) Low midstory pine tree basal area;
- (C) Low scrub/shrub cover; and

(D) Abundant, diverse, and native herbaceous vegetative groundcover, including a mix of grasses and forbs.

(ii) Suitable habitat in large (7,166 ac (2,900 ha)), contiguous blocks.

(iii) Soils with high sand content and a low water table.

(iv) An adequate Baird's pocket gopher population, as evidenced by abundant and widely distributed active mound complexes.

#### Special Management Considerations or Protection

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 which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Louisiana pinesnake may require special management considerations or protection to reduce the following threats: Loss of upland pine forest with an open canopy, reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher. For a detailed discussion of threats, see Summary of Factors Affecting the Species in our proposed listing rule (81 FR 69454, October 6, 2016, pp. 81 FR 69464–69472). Additional information may be found in the final listing rule (83 FR 14958; April 6, 2018).

High-quality natural upland pine forest habitat for the Louisiana pinesnake is generally characterized by a high, open canopy and shallow litter and duff layers. The forest structure is maintained by frequent, low-intensity fires, which, in turn, restrict a woody midstory and promote the flowering and seed production of fire-stimulated groundcover plants (Oswalt et al. 2012, pp. 2–3). The Louisiana pinesnake is historically associated with unfragmented natural upland pine forests, which were maintained by natural processes (e.g., fire) and include abundant herbaceous vegetation necessary to support the species' primary prey, the Baird's pocket gopher (Himes 1998, p. 43; Sulentic et al. 1991, p. 3; Rudolph and Burgdorf 1997, p. 17). One of the primary threats to the Louisiana pinesnake is the continuing loss and degradation of the open pine forest habitat that supports the Baird's pocket gopher, including the decline in or absence of fire on the landscape. Prescribed fire reduces midstory and understory hardwoods and promotes abundant herbaceous groundcover in

the natural communities of the upland dominant pine ecosystem where the Louisiana pinesnake most often occurs. In the absence of regularly recurring, unsuppressed fires, open pine forest habitat requires active management activities to produce and maintain Louisiana pinesnake habitat. These activities, such as thinning, prescribed burning, reforestation and afforestation, midstory woody vegetation control, herbaceous vegetation (especially forbs) enhancement, and harvest (particularly in stands that require substantial improvement) are necessary to maintain or restore forests to the conditions that are suitable for pocket gophers and Louisiana pinesnakes.

Forested areas managed with incompatible silvicultural practices that cause substantial subsurface disturbance and preclude continual, robust herbaceous vegetation growth have significant reductions in Baird's pocket gopher populations and may no longer support viable Louisiana pinesnake populations (Rudolph et al. 2006, p. 470). The Baird's pocket gopher forages on herbaceous vegetation and does not occur in areas with insufficient herbaceous vegetation. For example, pine plantation sites, which are generally lacking in herbaceous vegetation, are expected to support lower densities of Baird's pocket gophers than stands managed for a healthy understory. In addition, disturbance of subsoils (particularly those deeper than 4 in (10 cm)) may directly impact pocket gophers and Louisiana pinesnakes within burrows. Special management of the upland pine forest will ensure an open canopy, reduced midstory, and abundant herbaceous groundcover required for Louisiana pinesnake viability. Practices that create or maintain large areas of open-canopy forest with abundant herbaceous groundcover necessary for the Louisiana pinesnake include frequent prescribed burning (1- to 3-year fire interval) with seasonal variability; avoidance of intensive site preparation or other activities that disturb or destroy herbaceous vegetation; avoidance of bedding practices (mounding of tilled soil prior to planting); reduced planting densities or regularly planned stem thinning; avoidance of destruction of underground structure, such as pocket gopher burrows, small mammal burrows, and stump holes; and protection of upland pine forest habitat from development and new road construction.

The Louisiana pinesnake requires large, intact, unfragmented areas of high-quality, open-canopy upland pine habitat for sufficient viability. Within



the intact, unfragmented upland pine habitat, not all areas are expected to fully support all Louisiana pinesnake needs at all times. However, the landscape-level habitat heterogeneity provided by intact, unfragmented areas (particularly when those areas are fire-managed) allows the species to select habitats and microhabitats that meet species' life-history requirements and provide corridors for movement. As described above in *Space for Individual and Population Growth and for Normal Behavior*, these intact, unfragmented forested areas allow space for Louisiana pinesnake populations to maintain adequate home ranges, support species' dispersal, and allow movement to areas of higher-quality habitat with more resources available in periods of adverse conditions. In addition, large areas of intact, unfragmented upland pine habitats support sufficient Baird's pocket gopher populations spatially distributed within the habitat.

Fragmentation of intact, unfragmented habitat by roads also causes disruption in Louisiana pinesnake movements to seek out feeding, breeding, or sheltering resources due to avoidance of these areas by the species (Clark et al. 2010, pp. 1059, 1067). In addition, roads surrounding and traversing the remaining Louisiana pinesnake habitat pose a direct threat to the species through vehicle strike mortality.

Special management considerations may be required within critical habitat areas to address these threats. Management activities that could minimize or ameliorate these threats include, but are not limited to: (1) Application of prescribed fire and other forest management activities (e.g., thinning, midstory control, harvest) to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) minimization of ground and subsurface disturbance from silviculture practices such as bedding or disking; (3) protection of large, intact areas of upland pine forest habitat from development and new road construction; and (4) establishment of additional populations through captive rearing and translocation efforts. These management activities would protect the physical or biological features for the species by maintaining or restoring open-canopy pine habitat; reducing effects of silviculture practices on the Baird's pocket gopher; maintaining large, contiguous areas of open pine habitat by decreasing fragmentation; and improving population resiliency and species redundancy across the range of the Louisiana pinesnake.

### Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

To determine and select appropriate occupied areas that contain the physical or biological features essential to the conservation of the species or areas otherwise essential for the conservation of the Louisiana pinesnake, we developed a conservation strategy for the species. The goal of our conservation strategy for the Louisiana pinesnake is to improve the Louisiana pinesnake's viability through increases in resiliency, redundancy, and representation. The role of critical habitat in achieving this conservation goal is to identify the specific areas within the species' range that provide essential physical or biological features, without which rangewide resiliency, redundancy, and representation could not be achieved. The current distribution of the Louisiana pinesnake is reduced from its historical distribution, and we anticipate that recovery will require not only continued protection of the remaining extant populations and upland pine habitat but also reintroduction of populations in additional areas of the species' historical range to ensure there are adequate numbers of snakes in stable populations and that these populations occur over a wide geographic area. This strategy will help to ensure that catastrophic events, such as high-intensity wildfire or intense drought (which can remove or reduce suitable habitat, herbaceous vegetation, and prey in upland pine habitat), cannot simultaneously affect all known populations. In formulating the proposed critical habitat designation, we also took into account rangewide recovery considerations, such as maintaining or improving existing genetic diversity and striving for representation of all major portions of the species' current range, representation across the species' historical range, and the potential feasibility of augmentation and reintroduction efforts in suitable Louisiana pinesnake habitat. These

considerations require an understanding of the fundamental parameters of the species' biology and ecology based on well-accepted conservation-biology and ecological principles for conserving species and their habitats (Carroll et al. 1996, pp. 1–12; Shaffer and Stein 2000, pp. 301–321; Tear et al. 2005, pp. 835–849; Groom et al. 2006, pp. 419–551; Redford et al. 2011, pp. 39–48; Wolf et al. 2015, pp. 200–207).

We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 2018. We also are proposing to designate one area outside the geographical area occupied by the species because we have determined that the area is essential for the conservation of the species. This area contains suitable upland pine habitat for the species but is not known to be currently occupied by the species. With only seven known occupied areas, we have determined that this unoccupied area is essential for the conservation of the species. Establishment of new populations in unoccupied areas is necessary to ensure that there are adequate numbers of snakes in multiple populations over a wide geographic area, so that catastrophic events, such as high-severity wildfire or intense drought, would be less likely to simultaneously affect all known populations.

All occupied units proposed for critical habitat designation were occupied at the time of listing and are currently occupied by the Louisiana pinesnake, contain some or all of the physical or biological features essential to the conservation of the species (including large, contiguous blocks of upland natural pine habitat; suitable soils; and Baird's pocket gopher populations). The unoccupied unit proposed for critical habitat designation was historically occupied by the Louisiana pinesnake, but was not occupied at the time of listing. We have determined it is essential for the conservation of the Louisiana pinesnake because it will provide additional areas for Louisiana pinesnake recovery actions, including population establishment. The unoccupied unit also contains one or more of the physical or biological features that are essential to the conservation of the species as described above.

Guided by our conservation strategy goals, we determined which occupied and unoccupied areas to include as proposed critical habitat for the Louisiana pinesnake by focusing on the occupied habitat areas identified in our previous Federal actions for the species (proposed listing rule (81 FR 69454;



October 6, 2016), final listing rule (83 FR 14958; April 6, 2018), proposed 4(d) rule (83 FR 14836; April 6, 2018), and final 4(d) rule (85 FR 11297; February 27, 2020)); areas that are presently contributing to the viability of the species but in which resiliency can be improved; and other, unoccupied areas within the historical range of the species where reintroductions of Louisiana pinesnake will improve species' redundancy, which is essential for the conservation of the species.

We have determined that all areas known to be occupied at the time of listing and of sufficient areal extent should be proposed for critical habitat designation. However, recognizing that occupied habitat alone is not adequate for the conservation of the Louisiana pinesnake, we also used habitat and historical occurrence data to identify the historical range of the species and necessary habitat features to help us determine which unoccupied habitat areas are essential for the conservation of the species. To determine the general extent, location, and boundaries of critical habitat, we used Esri ArcGIS mapping software for mapping and calculating areas along with spatial data layers including: (1) Historical and current records of Louisiana pinesnake occurrences, distribution, and habitat requirements found in publications, agency reports, and personal communications; (2) geographic information system (GIS) data showing the estimated occupied habitat areas (EOHAs) and land ownership boundaries; (3) GIS data showing the location and extent of relatively unfragmented, continuously (1985 to 2015) forested areas (Hibbitts et al. 2016, entire); and (4) GIS data depicting soils and vegetation type to determine the presence of physical or biological features (U.S. Department of Agriculture 2020, unpaginated).

#### *Areas Occupied at the Time of Listing*

For the purposes of the proposed critical habitat designation, and for areas within the geographical area occupied by the species at the time of listing, we determined a unit to be occupied at the time of listing based on occurrence records used to articulate the EOHAs (*i.e.*, observations or collections between 1993 and 2018) and subsequent surveys conducted prior to listing. Based on the best available scientific data, we determined that all currently known occupied habitat for the Louisiana pinesnake was also occupied by the species at the time of listing, and that these areas contain the physical or biological features essential to the conservation of the species which may

require special management considerations or protection.

To delineate proposed critical habitat units, we first determined the area occupied by the Louisiana pinesnake at the time of listing (the April 6, 2018, final rule to list the species (83 FR 14958) had an effective date of May 7, 2018). We began by examining the species' occurrence records used to delineate the EOHAs referenced in both the listing and 4(d) rules. The EOHAs consist of a minimum convex polygon (polygon) drawn around a cluster of post-1993 (after extensive trapping and monitoring began) occurrence records meeting inclusion criteria (with a 1-km buffer around the polygon to account for home range activity around the occurrence record locations of the snakes in the cluster). The Service originally identified EOHAs in 2008, in an effort to focus conservation actions in areas where the Louisiana pinesnake is most likely to occur. The boundaries of EOHAs do not encompass all areas potentially occupied by the species. Most EOHA occurrence records are trap captures. Therefore, the information provided on Louisiana pinesnake's distribution and abundance is limited by the extent of trapping efforts, primarily the numbers of traps and targeted trapping in locations designed to improve catch rates. As a result, the areal extent of the EOHAs alone also cannot be used to estimate the species' occupied range. We note that not all areas within the EOHAs comprise suitable habitat, but not all suitable habitat is likely to be occupied. Additionally, because the EOHAs are based solely on occurrence records and not on habitat conditions such as soil type or vegetation structure, we used additional data specific to the Louisiana pinesnake's habitat associations to incorporate the habitat used by the species and refine EOHAs. These modeled areas are considered occupied by the species based on the continuous nature of the habitat and are within the dispersal distance and home ranges of the species.

For areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) We compiled all available current and historical occurrence data records meeting the inclusion criteria of the EOHAs as described in the proposed listing rule (81 FR 69454; October 6, 2016). The EOHAs were delineated by the Service and partners in 2016. We relied on Louisiana pinesnake verified occurrence records obtained between 1993 and 2015 when delineating EOHAs

ahead of the proposed listing rule. We excluded all records prior to 1993 (before extensive trapping began) and records older than 11 years (from the time of 2015 analysis; 11 years is the estimated Louisiana pinesnake generational turnover period (Marti 2014, pers. comm.)), when traps within 0.6 mi (1 km) of those records had been unproductive for 5 years of trap effort following the date of the records. In addition to the EOHAs, we also considered occurrence records obtained after the EOHA delineation (2016–2018).

(2) We evaluated habitat suitability of terrestrial areas contiguous with identified EOHAs that contain well-drained sandy soils with low clay content in the topsoil and a low water table and coarse scale suitable vegetation type (forest, shrub, and herbaceous) (Davis et al. 1938, p. 414; Wagner et al. 2014, p. 152; Ealy et al. 2004, p. 389).

(3) We selected areas of relatively unfragmented, continuously forested (assumed highest quality) habitat greater than 2,000 ha (4,942 ac) as identified by the Texas A&M University Natural Resources Institute and the U.S. Forest Service (USFS) habitat suitability model (Hibbitts et al. 2016, entire; Ryberg et al. 2016, entire). We based this criteria on the species' need for large, unfragmented areas of upland pine habitat of at least 2,900 ha (7,166 ac) as described in *Space for Individual and Population Growth and for Normal Behavior*. To allow for uncertainty in the model and variability of habitat conditions, we selected an area smaller than the species' requirement as a refining criteria for critical habitat unit delineation.

Using the approaches described above, we delineated a total of seven areas considered to be occupied at the time of listing for the Louisiana pinesnake. These areas have well-documented, recent occurrence information. Two of these areas consist primarily of lands within the Joint Readiness Training Center at Peason Ridge and Fort Polk. The entire Joint Readiness Training Center at Peason Ridge and a portion of Fort Polk are covered by an approved integrated natural resources management plan (INRMP) that provides benefits to the Louisiana pinesnake and its habitat and thus are exempted from the proposed designation under section 4(a)(3)(B)(i) of the Act (see Exemptions, below). Of the seven delineated occupied areas, the Peason Ridge unit is exempted from critical habitat designation. We are proposing to designate as critical habitat for the Louisiana pinesnake the five

remaining units occupied at the time of listing; they are described below (see Proposed Critical Habitat Designation, below).

*Areas Unoccupied at the Time of Listing*

We evaluated unoccupied areas within the species' range with historical occurrences and identified areas essential for the conservation of the species.

For areas outside the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the criteria described above to delineate occupied critical habitat with the additional following criteria:

We evaluated unoccupied areas of the Louisiana pinesnake's range with historical occurrences or occurrences not meeting the EOHA criteria, appropriate soil types and coarse scale suitable vegetation type, and areas of relatively unfragmented, continuously forested habitat as described above in the evaluation of occupied areas. The proposed unoccupied unit is almost entirely on USFS lands in the Evangeline Ranger District of the Kisatchie National Forest, with a small number of inholdings in private ownership. The USFS has managed habitat in the Kisatchie National Forest in a way that is compatible with Louisiana pinesnake's life-history requirements, has been engaged in reintroduction efforts with this species since 2010, and is expected to remain an engaged partner in species recovery. The unoccupied unit constitutes habitat for the Louisiana pinesnake based on the appropriate soil type, habitat condition, and management actions within the unit. Further, the following physical or biological features occur within the unoccupied unit: (1) Upland natural pine habitats that contain open-canopy stands of longleaf, shortleaf, slash, or loblolly pine trees that have low midstory tree density, low midstory

pine tree basal area, low scrub/shrub cover; and an abundant, diverse, and native herbaceous vegetative groundcover, including a mix of grasses and forbs; (2) suitable habitat in large (7,166 ac (2,900 ha)), contiguous blocks; (3) soils with high sand content and a low water table. Although we do not have specific information on Baird's pocket gopher populations, the habitat conditions are expected to support the gopher. Therefore, we have reasonable certainty that this unit is essential for the conservation of the Louisiana pinesnake.

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 the physical or biological features necessary for the Louisiana pinesnake. 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 proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and that contain one or more of the physical or biological features that are essential to support the life-history processes of the species. We have also identified, and propose for

designation as critical habitat, unoccupied areas that are essential for the conservation of the species.

Units are proposed for designation based on one or more of the physical or biological features being present to support the Louisiana pinesnake's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the Louisiana pinesnake's particular use of that habitat. However, all units are of sufficient size to sustain a Louisiana pinesnake population.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <https://www.regulations.gov> at Docket No. FWS-R4-ES-2021-0166 and on our internet site, <https://www.fws.gov/office/louisiana-ecological-services/library>.

**Proposed Critical Habitat Designation**

We are proposing six units as critical habitat for the Louisiana pinesnake. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Louisiana pinesnake. The six units we propose as critical habitat are: (1) Bienville, (2) Catahoula, (3) Evangeline, (4) Fort Polk/Vernon, (5) Scrappin' Valley, and (6) Angelina. Table 1 shows the proposed critical habitat units and the approximate area of each unit.

**TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE LOUISIANA PINESNAKE**  
[Area estimates reflect all land within critical habitat unit boundaries.]

Unit number and name	Ownership (acres (hectares))			Total area (acres (hectares))	Occupied?
	Federal	State	Private		
1. Bienville .....	0 (0)	333 (135)	60,750 (24,585)	61,083 (24,720)	Yes.
2. Catahoula .....	24,436 (9,889)	0 (0)	1,967 (796)	26,403 (10,685)	Yes.
3. Evangeline .....	54,507 (22,058)	0 (0)	2,716 (1,099)	57,223 (23,157)	No.
4. Fort Polk/Vernon .....	42,897 (17,360)	0 (0)	892 (361)	43,789 (17,721)	Yes.
5. Scrappin' Valley .....	0 (0)	0 (0)	5,058 (2,047)	5,058 (2,047)	Yes.
6. Angelina .....	14,424 (5,837)	0 (0)	1,542 (624)	15,966 (6,461)	Yes.
Total .....	136,264 (55,144)	333 (135)	72,925 (29,512)	209,520 (84,790)	

**Note:** Area sizes may not sum due to rounding.

More than half of the proposed critical habitat for the Louisiana pinesnake (129,902 ac (52,569 ha), or 62 percent) falls on USFS lands managed as habitat management units (HMU) to benefit the Louisiana pinesnake. The USFS land and resource management plans and the 2013 Programmatic Candidate Conservation Agreement with Assurances with the Louisiana Department of Wildlife and Fisheries (LDWF CCAA) provide guidelines on habitat management to benefit Louisiana pinesnake (and red-cockaded woodpecker, *Picoides borealis*) through management of upland pine habitat, including the use of tree thinning, chemical and mechanical hardwood and shrub removal, prescribed fire, and other actions to maintain and restore upland pine habitat (USFS 1996, pp. 107–134; USFS 1999, pp. 2–61 to 2–73; CCA 2003, entire).

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for the Louisiana pinesnake, below.

#### *Unit 1: Bienville*

Unit 1 consists of 61,083 ac (24,720 ha) in central Bienville Parish, Louisiana, west of Highway 155 and east of Highway 507, approximately 40 mi (64 km) southeast of Shreveport, Louisiana. In Unit 1, approximately 60,750 ac (24,585 ha) are located on private lands. Lands in State ownership in this unit include the 333-ac (135-ha) Big Cypress State Park (Louisiana Department of Culture, Recreation, and Tourism). Approximately 5,388 ac (2,180 ha) in this proposed unit are currently enrolled in the Service-approved and permitted LDWF CCAA, which includes conservation measures that provide a net benefit to the Louisiana pinesnake. This unit was occupied at the time of listing and is currently occupied by the Louisiana pinesnake. Unit 1 contains all of the physical or biological features essential to the conservation of the Louisiana pinesnake.

The physical or biological features essential to the conservation of the species in Unit 1 may require special management considerations or protection due to the following: Loss of upland pine forest with an open canopy, reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher, as described above in Special Management Considerations or Protection. Management activities in upland pine forest habitat that could minimize or ameliorate these threats in Unit 1

include, but are not limited to: (1) Application of prescribed fire and other forest management activities (e.g., thinning, midstory control, harvest) to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) implementation of silviculture best management practices that minimize subsurface disturbance; and (3) minimization of new road construction and closure of unused roads, particularly following timber harvest.

As noted above, approximately 5,388 ac (2,180 ha) in Unit 1 are lands in private ownership enrolled in the Service-approved and permitted LDWF CCAA (2013). All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule). Following publication of this proposed critical habitat rule, some lands in private ownership in Unit 1 may be enrolled in the Louisiana Pinesnake Programmatic Safe Harbor Agreement, currently under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### *Unit 2: Catahoula*

Unit 2 consists of 26,403 ac (10,685 ha) located in Grant Parish, Louisiana. In Unit 2, 1,967 ac (796 ha) are located on private lands. Approximately 24,436 ac (9,889 ha) are located within the Kisatchie National Forest—Catahoula Ranger District. The USFS lands in Unit 2 encompass an HMU dedicated to the Louisiana pinesnake. Within the HMU, management and conservation actions implemented to benefit the Louisiana pinesnake include tree thinning, chemical and mechanical hardwood and shrub removal, and prescribed fire. This unit was occupied at the time of listing and is currently occupied by the Louisiana pinesnake. Unit 2 contains at least three of the physical or biological features essential to the conservation of the Louisiana pinesnake. The presence of Baird's pocket gopher mounds has not been assessed, but the habitat is suitable for this species, and pocket gophers are expected to occur in Unit 2.

The physical or biological features essential to the conservation of the species in Unit 2 may require special management considerations or protection due to the following: Loss of upland pine forest with an open canopy,

reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher, as described above in Special Management Considerations or Protection. Special management considerations or protection may be required within Unit 2 to alleviate impacts from suboptimal habitat management resulting in increased woody understory and midstory vegetation, including actions to restore or maintain suitable forest conditions for the species. Management activities in upland pine habitat that could benefit the species and habitat in this subunit include, but are not limited to: (1) Application of prescribed fire and other forest management activities to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) implementation of silviculture best management practices that minimize subsurface disturbance; and (3) consideration of upland pine habitat in planning development and new road construction. These management activities would protect the physical or biological features for the species by maintaining or restoring open-canopy pine habitat; reducing effects of silviculture practices on the Baird's pocket gopher; and maintaining large, contiguous areas of open pine habitat by decreasing fragmentation.

Following publication of this proposed critical habitat rule, some lands in private ownership in Unit 2 may be enrolled in the Louisiana Pinesnake Programmatic Safe Harbor Agreement under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### *Unit 3: Evangeline*

Unit 3 consists of 57,223 ac (23,157 ha) located in Rapides Parish, Louisiana. In Unit 3, approximately 2,716 ac (1,099 ha) are located on private lands. Approximately 54,507 ac (22,058 ha) occur within the Kisatchie National Forest—Calcasieu Ranger District—Evangeline Unit. The USFS lands in Unit 3 encompass an HMU dedicated to the Louisiana pinesnake. Within the HMU, management and conservation actions implemented to benefit the Louisiana pinesnake include tree thinning, chemical and mechanical hardwood and shrub removal, and prescribed fire. This unit was historically occupied by the Louisiana pinesnake and contains at least three

physical or biological features essential to the conservation of the Louisiana pinesnake. The presence of Baird's pocket gopher mounds has not been assessed, but the habitat is suitable for this species, and pocket gophers are expected to occur in Unit 3.

This unit is currently unoccupied by the Louisiana pinesnake but is essential for the conservation of the species because it serves to protect habitat needed to recover the species by reestablishing wild populations within the historical range of the species. In addition, this unit contains at least three of the physical or biological features, is protected and actively managed as an HMU to benefit the Louisiana pinesnake, and has an appropriate spatial distribution falling within the range of the species. We have also determined that the unoccupied area constitutes habitat for the Louisiana pinesnake because it contains the appropriate soil type, habitat condition, and management actions within the unit. Further, the following physical or biological features occur within the unoccupied unit: (1) Upland natural pine habitats that contain open-canopy stands of longleaf, shortleaf, slash, or loblolly pine trees that have low midstory tree density, low midstory pine tree basal area, low scrub/shrub cover; and an abundant, diverse, and native herbaceous vegetative groundcover, including a mix of grasses and forbs; (2) suitable habitat in large (7,166 ac (2,900 ha)), contiguous blocks; (3) soils with high sand content and a low water table. Although we do not have specific information regarding Baird's pocket gopher populations on this unit, the habitat conditions are expected to support adequate prey populations.

Following publication of this proposed critical habitat rule, some lands in private ownership in Unit 3 may be enrolled in the Louisiana Pinesnake Programmatic Safe Harbor Agreement under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### *Unit 4: Fort Polk/Vernon*

Unit 4 consists of 43,789 ac (17,721 ha) located in Vernon Parish, Louisiana. In Unit 4, approximately 892 ac (361 ha) occur on lands in private ownership. The remaining 42,897 ac (17,360 ha) of Unit 4 is owned by the USFS and is within the Joint Readiness Training Center and Fork Polk, Louisiana (Fort

Polk). This unit was occupied at the time of listing and is currently occupied by the Louisiana pinesnake. Unit 4 contains all of the physical or biological features essential to the conservation of the Louisiana pinesnake.

The physical or biological features essential to the conservation of the species in Unit 4 may require special management considerations or protection due to the following: Loss of upland pine forest with an open canopy, reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher, as described above in Special Management Considerations or Protection. Special management considerations or protection may be required within Unit 4 to alleviate impacts from suboptimal habitat management resulting in increased woody understory and midstory vegetation, including actions to restore or maintain suitable forest conditions for the species. Management activities in upland pine habitat that could benefit the species and habitat in this subunit include, but are not limited to: (1) Application of prescribed fire and other forest management activities to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) implementation of silviculture best management practices that minimize subsurface disturbance; and (3) consideration of upland pine habitat in planning development and new road construction. These management activities would protect the physical or biological features for the species by maintaining or restoring open-canopy pine habitat; reducing effects of silviculture practices on the Baird's pocket gopher; and maintaining large, contiguous areas of open pine habitat by decreasing fragmentation.

The 42,897 ac (17,360 ha) of USFS-owned lands permitted for use by Fort Polk will be considered for exclusion from final critical habitat designation. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of National Security Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule). Additionally, following publication of this proposed critical habitat rule, some lands in private ownership in Unit 4 may be enrolled in the Louisiana Pinesnake Programmatic Safe Harbor Agreement under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other*

*Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### *Unit 5: Scappin' Valley*

Unit 5 is located in northern Newton County, Texas. The entire 5,058 ac (2,047 ha) in this unit are located on private lands. The Nature Conservancy (TNC) holds 1,675 ac (678 ha) in Unit 5 in a long-term conservation easement and implements conservation actions on the easement. This unit was occupied at the time of listing and is currently occupied by the Louisiana pinesnake. Unit 5 contains at least three of the physical or biological features essential to the conservation of the Louisiana pinesnake. The presence of Baird's pocket gopher mounds has not been assessed, but the habitat is suitable for this species, and pocket gophers are expected to occur in Unit 5.

The physical or biological features essential to the conservation of the species in Unit 5 may require special management considerations or protection due to the following: Loss of upland pine forest with an open canopy, reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher, as described above in Special Management Considerations or Protection. Management activities in upland pine forest habitat that could minimize or ameliorate these threats in Unit 5 include, but are not limited to: (1) Application of prescribed fire and other forest management activities (*e.g.*, thinning, midstory control, harvest) to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) implementation of silviculture best management practices that minimize subsurface disturbance; and (3) minimization of new road construction and closure of unused roads, particularly following timber harvest.

Of the lands in private ownership, TNC holds 1,675 ac (678 ha) in Unit 5 in a long-term conservation easement with conservation measures in place expected to benefit the Louisiana pinesnake, including prescribed fire. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule). Additionally, following publication of this proposed critical habitat rule, some lands in private ownership in Unit 5 may be enrolled in the Louisiana

Pinesnake Programmatic Safe Harbor Agreement under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### Unit 6: Angelina

Unit 6 is comprised of 15,966 ac (6,461 ha) located in northwestern Jasper and southeastern Angelina Counties, Texas. Within Unit 6, approximately 1,542 ac (624 ha) are lands in private ownership. Approximately 14,424 ac (5,837 ha) are USFS lands and fall within the Angelina National Forest; the western portion of Unit 6 falls within the Upland Island Wilderness Area in the Angelina National Forest. The USFS lands in Unit 6 encompass an HMU dedicated to conservation efforts to benefit the Louisiana pinesnake. Within the HMU, management and conservation actions implemented to benefit the Louisiana pinesnake include tree thinning, chemical and mechanical hardwood and shrub removal, and prescribed fire. This unit was occupied at the time of listing and is currently occupied by the Louisiana pinesnake. Unit 6 contains at least three of the physical or biological features essential to the conservation of the Louisiana pinesnake. The presence of Baird's pocket gopher mounds has not been assessed, but the habitat is suitable for this species, and pocket gophers are expected to occur in Unit 6.

The physical or biological features essential to the conservation of the species in Unit 6 may require special management considerations or protection due to the following: Loss of upland pine forest with an open canopy, reduced midstory, and abundant herbaceous ground cover; fragmentation of large areas of upland pine forest habitat; and subsurface disturbance that affects the Baird's pocket gopher, as described above in Special Management Considerations or Protection. Management activities in upland pine forest habitat that could minimize or ameliorate these threats in Unit 6 include, but are not limited to: (1) Application of prescribed fire and other forest management activities (e.g., thinning, midstory control, harvest) to promote a diverse, abundant herbaceous groundcover and open-canopy pine habitat; (2) implementation of silviculture best management practices that minimize subsurface disturbance; and (3) minimization of new road construction and closure of unused

roads, particularly following timber harvest.

Following publication of this proposed critical habitat rule, some lands in private ownership in Unit 6 may be enrolled in the Louisiana Pinesnake Programmatic Safe Harbor Agreement under development. All or some of these lands may be excluded from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts* under Consideration of Impacts under Section 4(b)(2) of the Act later in this proposed rule).

#### Effects of Critical Habitat Designation

##### Section 7 Consultation

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

We published a final rule revising the definition of destruction or adverse modification on February 11, 2016 (81 FR 7214) (although we also published a revised definition after that on August 27, 2019). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

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, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

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

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

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

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

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

(3) Are economically and technologically feasible, and

(4) Would, in the Service 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 set forth requirements for Federal agencies to reinstate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical

habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

#### *Application of the “Destruction or Adverse Modification” Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed 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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter the suitability of open-canopy upland pine habitat in a manner incompatible with Louisiana pinesnake’s life-history requirements. Such activities could include, but are not limited to: forest and silvicultural activities, such as disking, bedding, and other management actions, that involve substantial ground disturbance; conversion to densely stocked pine plantations; and chemical applications (pesticides or herbicides) that are either not applied in accordance with label directions or that are not directly aimed at hazardous fuels reduction, midstory hardwood control, or noxious weed

control. These activities could destroy or alter the pine forest habitats and refugia necessary for the growth and development of Louisiana pinesnakes, and may reduce populations of the snake’s primary prey (Baird’s pocket gopher), either through direct extermination or through loss of the forage necessary to sustain the prey base.

(2) Actions that would significantly fragment Louisiana pinesnake habitat. Such activities could include, but are not limited to: Conversion of upland pine forested habitat to other uses (agricultural, urban/residential development) and construction of new structures or roads. These activities could lead to degradation or elimination of forest habitat, limit or prevent breeding opportunities for Louisiana pinesnakes, limit access to familiar refugia or nesting sites within individual home ranges, and increase the frequency of road mortality from road crossings.

#### **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 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)) provides that the Secretary shall not

designate as critical habitat any lands or other geographical areas owned or controlled by the DoD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the Louisiana pinesnake to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are DoD lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

#### *Approved INRMPs*

Joint Readiness Training Center at Peason Ridge and Fort Polk; 30,758 ac (12,447 ha)

The Joint Readiness Training Center at Peason Ridge and Fort Polk is located in Natchitoches, Sabine, and Vernon parishes, Louisiana. The installation is divided into two separate areas: Peason Ridge Training Area (Peason Ridge) to the north and Fort Polk Military Reservation (Fort Polk) to the south. Peason Ridge is located on DoD-owned lands and is managed by the DoD in coordination with the LDWF. Fort Polk is located on DoD-owned land and uses adjacent USFS property for training under permit. These lands are managed by the DoD and the USFS in coordination with the LDWF. The USFS-permitted lands are governed by a special use permit and plan of operation effective from 2004 to 2024. Fort Polk has a Service-approved INRMP, which serves as the principal management plan governing all natural resource activities on DoD lands on the Fort Polk and Peason Ridge installations. The INRMP for the Joint Readiness Training Center at Peason Ridge and Fort Polk (Fort Polk INRMP) covers fiscal years 2020 to 2024, and serves as the principal management plan governing all natural resource activities on DoD lands on the installations.

For several decades, the Fort Polk INRMP benefited the Louisiana pinesnake through ongoing ecosystem management and active management of red-cockaded woodpecker habitat, which provided habitat for Louisiana pinesnake. More recently, the INRMP has included management actions

intended to specifically benefit the Louisiana pinesnake (U.S. Army 2020, p. 85). Among the goals and objectives listed in the Endangered Species Management Component of the INRMP is habitat management for rare, threatened, and endangered species, and the Louisiana pinesnake is included in this plan. Management actions and elements that benefit the Louisiana pinesnake and its habitat include: Management of upland pine habitats within Louisiana pinesnake habitat management units in a way compatible with the species' needs; Louisiana pinesnake monitoring studies, surveys, and research on breeding habitat, diseases, and behavior; implementation of awareness and education programs for the public and soldiers to reduce snake mortality or collection; and surveys for Baird's pocket gopher in advance of projects (U.S. Army 2020, pp. 81–82). Additional elements of the INRMP that will benefit Louisiana pinesnake and its habitat are awareness training for U.S. Army personnel to continue to avoid and reduce impacts to Louisiana pinesnakes during training, as well as public outreach and education. These conservation efforts reflect actions, reporting, and coordination described in an earlier candidate conservation agreement for the Louisiana pinesnake to which Fort Polk was a party (USFWS 2013).

Approximately 3,147 ac (1,273 ha) on the Peason Ridge installation and 27,611 ac (11,174 ha) are located within the area covered by this INRMP. Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Fort Polk INRMP and that conservation efforts identified in the INRMP provide a benefit to the Louisiana pinesnake. Therefore, DoD lands within these installations that are covered under the Fort Polk INRMP are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 3,147 ac (1,273 ha) of habitat on Peason Ridge and 27,611 ac (11,174 ha) of habitat on Fort Polk in this proposed critical habitat designation because of this exemption.

#### **Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from

designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the “2016 Policy”; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled “The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act” (M–37016). We explain each decision to exclude areas, as well as decisions not to exclude, to demonstrate that the decision is reasonable.

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, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

#### *Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed 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, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat 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 would not be expected without 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 use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary section 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable economic effects of the designation of critical habitat for the Louisiana pinesnake (Industrial Economics, Incorporated (IEC) 2021). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis



on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas will also jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units are unoccupied because they require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the Louisiana pinesnake; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Louisiana pinesnake, first we identified, in the IEM dated March 2, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (USFS, DoD), (2) agriculture, (3) commercial and residential development, (4) forest management, (5) conservation and restoration, (6) timber/lumber operations, and (7) transportation and utility projects. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect

activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Louisiana pinesnake is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that result from the species being listed and those that would be attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Louisiana pinesnake. Because the designation of critical habitat for the Louisiana pinesnake is being proposed several years following the listing of the species, data, such as from consultation history, are available to help us discern which conservation efforts are attributable to the species being listed and those that would result solely from the designation of critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Louisiana pinesnake would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Louisiana pinesnake totals approximately 209,520 ac (84,790 ha) in six units in Louisiana and Texas. Five of the six units are currently occupied by the Louisiana pinesnake; the remaining unit is within the snake's historical range but was not occupied at the time the species was listed in 2018, and is not known to be currently occupied. Included lands are under Federal, State, and private ownership, and Federal land is predominant in Units 2, 3, 4 and 6. The proposed critical habitat is composed of lands

under private (35 percent), State (0.1 percent), and Federal (65 percent) ownership. Occupied units represent 73 percent of the proposed critical habitat area. Table 1, above, sets forth specific information concerning each unit, including occupancy and land ownership. The proposed critical habitat does not overlap with designated or proposed critical habitat for any other endangered or threatened species.

Within the occupied units, any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the Louisiana pinesnake. Therefore, only administrative costs are expected for actions affecting approximately 73 percent of the proposed critical habitat designation. While the analysis for adverse modification of critical habitat will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The remaining 57,223 ac (23,157 ha) (27 percent of the total proposed critical habitat designation) are currently unoccupied by the species but are essential for the conservation of the species. In these unoccupied areas, any conservation efforts or associated probable impacts would be considered incremental effects attributed to the critical habitat designation. Within the 57,223-ac (23,157-ha) unoccupied proposed critical habitat, few actions are expected to occur that would result in additional section 7 consultation or associated project modifications outside of the current Service-approved USFS land and resource management plan. Proposed Unit 3 (Evangeline) is located on lands in USFS and private ownership. The USFS is currently implementing management and conservation actions to benefit the Louisiana pinesnake on HMUs in the Kisatchie National Forest, including lands in Unit 3, under the 2003 candidate conservation agreement for the Louisiana pinesnake and a USFS land and resource management plan. Communications with affected entities indicated that critical habitat designation would likely result in just a few consultations in this unit, with minor additional conservation efforts that would be expected to result in relatively low probable economic impacts. Based on the geographic

distribution of historical section 7 consultations and technical assistance, as well as the assumption that administrative costs would be higher in unoccupied areas, the highest costs are anticipated in Unit 3.

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands; however, costs to private entities within these sectors are expected to be minor, as much of the proposed critical habitat is in Federal ownership (65 percent). The proposed designation for the Louisiana pinesnake includes some private lands (35 percent), although some of the private lands are conserved in perpetuity. As such, incremental costs from public perception of the designation have some potential to arise, but are speculative. However, a robust consultation history exists for this species, as well as for the red-cockaded woodpecker, a listed species with an overlapping range and similar habitat structure needs. Landowners in these areas are, therefore, less likely to experience regulatory uncertainty associated with critical habitat. While perceptual effects on land values are possible, the likelihood and magnitude of such effects are uncertain.

The probable incremental economic impacts of this proposed critical habitat designation for the Louisiana pinesnake are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to two factors: (1) A large portion of proposed critical habitat is considered to be occupied by the species (73 percent), where incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely; and (2) in proposed areas that are not occupied by the Louisiana pinesnake (27 percent), few actions are anticipated that would result in section 7 consultation or associated project modifications. Because of the volume of lands that are State-, county-, or privately owned, and the substantial amount of lands that are already being managed for conservation, the numbers of section 7 consultations expected annually are modest (approximately 2 formal, 58 informal, and 15 technical assistance efforts annually across the designation).

Critical habitat designation for the Louisiana pinesnake is unlikely to generate costs or benefits exceeding \$100 million in a single year. Therefore, this proposed rule is unlikely to meet the threshold for an economically significant rule, with regard to costs, under E.O. 12866. In fact, the total annual incremental costs of critical habitat designation for the Louisiana pinesnake are anticipated to be less than \$240,000 per year, and economic benefits are also anticipated to be small.

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

#### *Consideration of National Security Impacts*

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of "critical habitat." However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD,

DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

We have evaluated whether any of the lands within the proposed designation of critical habitat are owned by DoD or DHS or could lead to national-security or homeland-security impacts if designated. In this discussion, we describe the areas within the proposed designation that are owned by DoD or DHS or for which designation could lead to national-security or homeland-security impacts. For each area, we describe the available information indicating whether we have reason to consider excluding the area from the designation. If, during the comment period, we identify or receive information about additional areas for which designation may result in incremental national-security or homeland-security impacts, then we will consider whether to exclude those

additional areas under the authority of section 4(b)(2) of the Act.

#### Fort Polk

In preparing this proposal, we have determined that some lands within Unit 4 of the proposed designation of critical habitat for the Louisiana pinesnake are used under permit by the U.S. Army, which is part of DoD. We have previously described two areas (Peason Ridge and Fort Polk) with an approved INRMP under application of section 4(a)(3)(B)(i) of the Act, above. As discussed in the Unit 4 description, above, the USFS-permitted lands used by Fort Polk are located to the south of the DoD lands and are separated into two areas: the Intensive Use Area (IUA) and the Limited Use Area (LUA). None of the acreage within the IUA or LUA is covered under the Fort Polk INRMP; thus, none of this acreage was considered for exemption under section 4(a)(3)(B)(i) of the Act (see *Approved INRMPs* under Exemptions, above).

The IUA and LUA are operated by the DoD for training and maneuver exercises in an area of the Vernon Unit, Calcasieu Ranger District, of the Kisatchie National Forest in Vernon Parish, Louisiana. The DoD uses this area under a special use permit from the USFS, who is the primary landowner and manager within the installation boundary.

The DoD has expressed concern that the designation of critical habitat on the IUA and LUA would have implications for national security, as summarized below. The potential impacts of designating the IUA or LUA on national security include restrictions on military training exercises. Lands within the IUA and LUA are used for artillery training that provides soldiers with essential battlefield combat skills. Excluding these USFS lands from critical habitat designation would remove the potential impact that a designation of critical habitat could have on the ability to maintain national security. Additionally, the IUA and LUA are cooperatively managed by the DoD, USFS, and LDWF to benefit the Louisiana pinesnake and red-cockaded woodpecker, including prescribed burning of upland pine stands as part of the candidate conservation agreement on USFS habitat management units (U.S. Army appendix D.3 2020, p. 31). Therefore, we are considering for exclusion from the final critical habitat designation 42,897-ac (17,360-ha) of USFS-owned lands in proposed Unit 4 as a result of impacts to national security under section 4(b)(2) of the Act.

#### Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local social, or other impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of the Louisiana pinesnake, the benefits of critical habitat include public awareness of the presence of the Louisiana pinesnake and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Louisiana pinesnake due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not

limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

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

#### Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service, sometimes through the permitting process under section 10 of the Act.

When we undertake a discretionary section 4(b)(2) analysis, we evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. The factors we consider may differ, depending on whether we are evaluating a conservation plan that involves permits under section 10 or a non-permitted plan (see sections c and b, respectively, of the 2016 Policy).

Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitats. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an “enhancement of survival” permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions, specific land uses, and, in the case of SHAs, the option to return to a baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans such as CCAAs, SHAs, and HCPs, we anticipate consistently excluding such areas if incidental take caused by the activities in those areas is covered by the permit under section 10 of the Act and the CCAA/SHA/HCP meets all of the following three factors (see the 2016 Policy for additional details):

a. The permittee is properly implementing the CCAA/SHA/HCP and is expected to continue to do so for the term of the agreement. A CCAA/SHA/HCP is properly implemented if the permittee is and has been fully implementing the commitments and provisions in the CCAA/SHA/HCP, implementing agreement, and permit.

b. The species for which critical habitat is being designated is a covered species in the CCAA/SHA/HCP, or very similar in its habitat requirements to a covered species. The recognition that the Services extend to such an agreement depends on the degree to which the conservation measures undertaken in the CCAA/SHA/HCP

would also protect the habitat features of the similar species.

c. The CCAA/SHA/HCP specifically addresses that species’ habitat and meets the conservation needs of the species in the planning area.

The proposed critical habitat designation includes areas that are covered by the following permitted plan providing for the conservation of Louisiana pinesnake: Programmatic Candidate Conservation Agreement with Assurances with the Louisiana Department of Wildlife and Fisheries (LDWF CCAA).

The LDWF CCAA is intended to further the conservation of the Louisiana pinesnake on private lands by protecting known populations and additional potential habitat through reducing threats to the species’ habitat and survival, restoring degraded potential habitat on suitable soils, and potentially reintroducing captive-bred snakes to select areas of the restored habitat.

Signed in 2017, the LDWF CCAA for Louisiana pinesnake is an umbrella document under which individual landowners in Bienville, Beauregard, Jackson, Natchitoches, Rapides, Sabine, Vernon, Winn, Grant, and Allen parishes, Louisiana, may participate. Three private landowners within the range of the Louisiana pinesnake hold certificates of inclusion under the enhancement of survival permit that expires in 2116. All enrolled parcels are in Bienville Parish, Louisiana, and total 5,388 ac (2,180 ha). The three properties consist of Bienville Kep, a 1,067-ac (432-ha) ranch; Bienville Plan, a 2,698-ac (1,092-ha) property; and Bienville San, a 1,624-ac (657-ha) property. They are of sufficient size to benefit the Louisiana pinesnake when conservation measures are implemented. Each landowner implements conservation measures designed to protect and enhance habitat for the benefit of the Louisiana pinesnake on private lands enrolled under the agreement. The three landowners must maintain upland pine habitats compatible with Louisiana pinesnake’s life-history requirements in accordance with each certificate of inclusion. Conservation land use practices vary according to the needs of a particular enrolled landowner, but the three landowners currently enrolled use land management practices of prescribed fire, forest thinning, and replanting of native species on enrolled lands. The use of these measures maintains or improves the physical and biological features required by the Louisiana pinesnake, namely natural upland pine forests that contain open canopy stands of longleaf, shortleaf,

slash, or loblolly pine trees that have low midstory tree density and pine tree basal area, limited scrub/shrub cover, and abundant, diverse, and native herbaceous vegetative groundcover (including a mix of grasses and forbs) to support the Louisiana pinesnake’s primary prey item (Baird’s pocket gopher). The LDWF CCAA also allows for implementation of other conservation measures beneficial to the Louisiana pinesnake that may be developed in the future.

After considering the factors described above, we have identified the following areas that we have reason to consider excluding because of permitted plans: 5,388 ac (2,180 ha) of private lands in Bienville Parish, Louisiana, currently enrolled in the LDWF CCAA for the Louisiana pinesnake. We describe below our reasons for considering these areas for potential exclusion.

Programmatic Candidate Conservation Agreement With Assurances With the Louisiana Department of Wildlife and Fisheries (LDWF CCAA)

Critical habitat within Unit 1 that is currently associated with the LDWF CCAA is wholly comprised of the three enrolled properties described above. Based on our review of the LDWF CCAA and proposed critical habitat for the Louisiana pinesnake, we do not anticipate requesting any additional conservation measures for the species beyond those that are currently in place. The LDWF CCAA covers the Louisiana pinesnake, addresses the specific habitat of the species and meets the conservation needs of the species, and is currently being implemented properly. Therefore, at this time, we are considering excluding those specific lands associated with the LDWF CCAA from the final designation of critical habitat for the Louisiana pinesnake. However, we will more thoroughly review the CCAA, the implementation of its conservation measures for the Louisiana pinesnake and its habitat, and public comment on this issue prior to finalizing critical habitat, and, if appropriate, we will exclude from critical habitat for the Louisiana pinesnake those lands enrolled in the LDWF CCAA.

Draft Programmatic Safe Harbor Agreement (SHA) for the Louisiana Pinesnake in Louisiana and Texas (Unknown Acreage)

The draft SHA was developed in 2021, and is expected to be finalized in 2022, with an enhancement of survival permit issued at the time of finalization. The parties to the draft SHA include the

LDWF, Texas A&M Forest Service, Texas Parks and Wildlife Department, and the Service. Non-federal landowners (“enrolled cooperators”) within the range of the species in western and central Louisiana and eastern Texas will be eligible to enroll suitable property under the SHA, when finalized, and receive a certificate of inclusion. The geographic area covered by the draft SHA includes Angelina, Hardin, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, Trinity, Tyler, and Wood counties in Texas, and Bienville, Beauregard, Jackson, Natchitoches, Rapides, Sabine, and Vernon parishes, and as well as additional lands in Winn, Grant, and Allen parishes, in Louisiana. Conservation measures implemented on enrolled properties are site-specific but will address loss and degradation of suitable habitat, isolated populations, and vehicle mortality, and will provide a net conservation benefit to the Louisiana pinesnake. Management actions specified in the draft SHA include prescribed fire, chemical vegetation control, thinning and conversion of loblolly and slash pine stands to longleaf pine forest, silviculture best management practices, and species and habitat monitoring. The use of these measures maintains or improves the physical and biological features required by the Louisiana pinesnake, namely upland natural pine forests that contain open-canopy stands of longleaf, shortleaf, slash, or loblolly pine trees that have low midstory tree density and pine tree basal area, limited scrub/shrub cover, and abundant, diverse, and native herbaceous vegetative groundcover (including a mix of grasses and forbs) to support the Louisiana pinesnake’s primary prey item (Baird’s pocket gopher). The draft SHA also allows for implementation of other conservation measures beneficial to the Louisiana pinesnake that may be developed in the future. Critical habitat within the range of the species that may be associated with the SHA is yet to be determined. When the draft SHA is finalized and the associated enhancement of survival permit issued, an unknown number of private properties in all proposed critical habitat units may be enrolled in the SHA. Based on our review of the draft SHA and proposed critical habitat for the Louisiana pinesnake, we find that the conservation measures within the draft SHA are sufficient to provide for the conservation of the Louisiana pinesnake on the enrolled lands. The draft SHA covers the Louisiana pinesnake, addresses the specific habitat

of the species and meets the conservation needs of the species, and is expected to be implemented. Therefore, at this time, we are considering excluding from the final critical habitat designation those specific lands in private ownership that will be enrolled in the SHA prior to development of the final critical habitat designation for the Louisiana pinesnake. However, we will more thoroughly review the SHA, its conservation measures for the Louisiana pinesnake and its habitat, and public comment on this issue prior to finalizing critical habitat, and, if appropriate, we will exclude from critical habitat for the Louisiana pinesnake those lands enrolled in the finalized and permitted SHA.

#### Non-Permitted Conservation Plans, Agreements, or Partnerships

Shown below is a non-exhaustive list of factors that we consider in evaluating how non-permitted plans or agreements affect the benefits of inclusion or exclusion. These are not required elements of plans or agreements. Rather, they are some of the factors we may consider, and not all of these factors apply to every plan or agreement.

(i) The degree to which the record of the plan, or information provided by proponents of an exclusion, supports a conclusion that a critical habitat designation would impair the realization of the benefits expected from the plan, agreement, or partnership.

(ii) The extent of public participation in the development of the conservation plan.

(iii) The degree to which agency review and required determinations (*e.g.*, State regulatory requirements) have been completed, as necessary and appropriate.

(iv) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required.

(v) The demonstrated implementation and success of the chosen mechanism.

(vi) The degree to which the plan or agreement provides for the conservation of the essential physical or biological features for the species.

(vii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented.

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

The proposed critical habitat designation includes areas that are

covered by the following non-permitted plan providing for the conservation of Louisiana pinesnake: The Nature Conservancy’s Scrappin’ Valley Easement (1,675 ac (678 ha)).

The Nature Conservancy of Texas holds a conservation easement in perpetuity on 1,675 ac (678 ha) of longleaf-dominated upland pine habitat in private ownership in Newton County, Texas. The land is managed with conservation actions, including prescribed fire, hardwood removal, thinning of loblolly and slash pine, and restoration planting, that maintain and improve the longleaf pine habitat for red-cockaded woodpeckers and also benefit the Louisiana pinesnake. The use of these measures maintains or improves the physical and biological features required by Louisiana pinesnake, namely upland natural pine forests that contain open-canopy stands of longleaf, shortleaf, slash, or loblolly pine trees that have low midstory tree density and pine tree basal area, limited scrub/shrub cover, and abundant, diverse, and native herbaceous vegetative groundcover (including a mix of grasses and forbs) that are required to support the Louisiana pinesnake’s primary prey item (Baird’s pocket gopher).

After considering the factors described above, we have identified the following areas that we have reason to consider excluding because of non-permitted plans: 1,675 ac (678 ha) of private lands in Scrappin’ Valley under conservation easement held by The Nature Conservancy. Below, we describe our reasons for considering this area for potential exclusion.

#### The Nature Conservancy’s Scrappin’ Valley Easement

Critical habitat within proposed Unit 5 that is currently part of a perpetual conservation easement held by The Nature Conservancy of Texas is limited to the private lands described above. Based on our review of the easement and proposed critical habitat for the Louisiana pinesnake, we do not anticipate requesting any additional conservation measures for the species beyond those that are currently in place. The landowners have implemented conservation actions including habitat management that improves the vegetation structure of the habitat and benefits the Louisiana pinesnake. As described above, these efforts provide for the conservation of the physical or biological features essential to the conservation of the Louisiana pinesnake by maintaining or improving the upland natural pine forests so that they are characterized by open-canopy stands

with low midstory tree density and pine tree basal area, limited scrub/shrub cover, and abundant, diverse, and native herbaceous groundcover. The conservation easement is perpetual and we have a reasonable expectation that the strategies and actions will be implemented in the future to a similar degree they have in the past based on the habitat condition. The conservation easement includes a monitoring component and adaptive management to ensure conservation measures are effective and can be modified based on management results and conservation needs. We recognize that the private lands under the conservation easement make an important contribution to the conservation and recovery of the Louisiana pinesnake and expect these lands will continue to do so if excluded from the critical habitat designation for the species. Therefore, at this time, we are considering excluding those specific lands associated with the easement from the final designation of critical habitat for the Louisiana pinesnake. However, we will more thoroughly review the easement, the implementation of its conservation measures for the Louisiana pinesnake and its habitat, and public comment on this issue prior to finalizing critical habitat, and, if appropriate, we will exclude from critical habitat for the Louisiana pinesnake those lands covered by the easement.

#### Tribal Lands

Several Executive Orders, Secretarial Orders, and policies concern working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretarial Order 3206, *American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the

designation of critical habitat. Section 3(b)(4) of the appendix requires the Service to consult with affected Tribes when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally owned fee lands, or the exercise of Tribal rights. That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.

Our implementing regulations at 50 CFR 424.19 and the 2016 Policy are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis under section 4(b)(2) of the Act, in accordance with S.O. 3206, we consult with any Tribe whose Tribal trust resources, Tribally owned fee lands, or Tribal rights may be affected by including any particular areas in the designation, and we evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas and give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not override the Act's statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of "critical habitat" (*i.e.*, areas occupied at the time of listing that contain the essential physical or biological features which may require special management considerations or protection, and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretary's statutory authority under the Act or other statutes. There are no Tribal lands within the proposed critical habitat for the Louisiana pinesnake.

#### Federal Lands

Federal land managers have unique obligations under the Act. First, Congress declared its policy that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act (section 2(c)(1)). Second, all Federal agencies have responsibilities under section 7 of the Act to carry out programs for the conservation of listed species and to

ensure their actions are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Therefore, in general we focus our exclusions on non-Federal lands. Our regulations at 50 CFR 424.19 and the 2016 Policy provide for the consideration of the exclusion of Federal lands in particular instances.

In preparing this proposal, we have determined that portions of the Catahoula and Calcasieu ranger districts in the Kisatchie National Forest (Units 2, 3, 4) and the Angelina National Forest (Unit 6) are Federal lands that meet the definition of critical habitat for the Louisiana pinesnake. However, at this time, we are not aware of information of economic or other relevant impact that is meaningful to support a benefit of exclusion on those Federal lands. Therefore, we are not considering to exclude any Federal lands, other than those discussed above that we are considering for exclusion for national security reasons, from this proposed designation of critical habitat. However, if, through the public comment period, we receive information regarding impacts to Federal lands within the proposed designation of critical habitat for the Louisiana pinesnake, then as part of developing the final designation of critical habitat, we will evaluate that information to determine whether to conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If after this evaluation we do not exclude, we will fully explain our decision.

#### *Summary of Exclusions Considered Under Section 4(b)(2) of the Act*

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat Units 1–6 are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation.

We have reason to consider excluding the following areas under section 4(b)(2) of the Act from the final critical habitat designation for Louisiana pinesnake. Table 2, below, provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but for

which we are considering possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 2—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas considered for possible exclusion, in acres (hectares)	Rationale for proposed exclusion
Unit 1: Bienville .....	LDWF CCAA .....	61,083 (24,720) .....	5,388 (2,180) .....	Conservation partnership.
Unit 4: Fort Polk/Vernon .....	USFS lands permitted for use by DOD	43,789 (17,721) .....	42,897 (17,360) .....	National security.
Unit 5: Scrappin' Valley .....	TNC conservation easement .....	5,058 (2,047) .....	1,675 (678) .....	Conservation partnership.
Units 1–6 .....	Louisiana Pinesnake Programmatic SHA.	Up to 209,520 (84,790) .....	Enrolled lands .....	Conservation partnership.

In conclusion, for this proposed rule, we have reason to consider excluding the areas identified above based on national security impacts and other relevant impacts. We specifically solicit comments on the inclusion or exclusion of such areas. During the development of a final designation, we will consider any information currently available or received during the public comment period regarding other relevant impacts of the proposed designation and will determine whether these or any other specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the joint 2016 Policy.

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*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. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation’s regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed 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 of 1996 (SBREFA; 5 U.S.C. 801 et seq.), whenever an agency is required to 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 (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact

on a substantial number of small entities. 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.

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; and small businesses (13 CFR 121.201). 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 whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as 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.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated 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 ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, this critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final as proposed, this critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial 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. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use, because these types of activities are not occurring and not expected to occur in areas being proposed as critical habitat. 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 finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that

would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; 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 proposed rule would significantly or uniquely affect small governments because the government-owned lands being proposed for critical habitat designation are owned by the State of Louisiana, the Department of Defense, and the U.S. Forest Service. None of these government entities fits the definition of “small governmental jurisdiction.” Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Louisiana pinesnake in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for Louisiana pinesnake, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

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

proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for 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 State and local governments in long-range planning because they no longer have to 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) of the Act 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 would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The

proposed areas of critical habitat are presented on maps, and the proposed 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 proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *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 regulations adopted pursuant to section 4(a) of 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 coordinated with the Chitimacha, Coushatta, Tunica-Biloxi, Alabama-Coushatta, and Jena Band of Choctaw Tribes as we began to develop the species status assessment for the Louisiana pinesnake in 2019, and we provided the IEM to the same Tribes as we began work on proposing critical habitat. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Louisiana pinesnake, so no Tribal lands would be affected by the proposed designation.

#### References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Louisiana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Louisiana Ecological Services Field Office.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

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

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11, in paragraph (h), by revising the entry for “Pinesnake, Louisiana” in the List of Endangered and Threatened Wildlife under REPTILES to read as follows:

#### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
REPTILES				
*	*	*	*	*
Pinesnake, Louisiana .....	<i>Pituophis ruthveni</i> .....	Wherever found .....	T	83 FR 14958, 4/6/2018; 50 CFR 17.42(i); <sup>4d</sup> 50 CFR 17.95(c). <sup>CH</sup>
*	*	*	*	*

■ 3. Amend § 17.95, in paragraph (c), by adding an entry for “Louisiana Pinesnake (*Pituophis ruthveni*)”, immediately following the entry for “Black Pinesnake (*Pituophis melanoleucus lodingi*)”, to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(c) *Reptiles.*

\* \* \* \* \*

Louisiana Pinesnake (*Pituophis ruthveni*)

(1) Critical habitat units are depicted for Bienville, Grant, Rapides, and Vernon parishes, Louisiana, and Angelina, Jasper, and Newton Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the Louisiana pinesnake consist of the following components:

(i) Upland natural pine habitats that contain open-canopy stands of longleaf,

shortleaf, slash, or loblolly pine trees that have:

- (A) Low midstory tree density;
- (B) Low midstory pine tree basal area;
- (C) Low scrub/shrub cover; and
- (D) Abundant, diverse, and native herbaceous vegetative groundcover, including a mix of grasses and forbs.

(ii) Suitable habitat in large (7,166 acres (2,900 hectares)), contiguous blocks.

(iii) Soils with high sand content and a low water table.

(iv) An adequate Baird’s pocket gopher (*Geomys breviceps*) population, as evidenced by abundant and widely distributed active mound complexes.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF FINAL RULE].

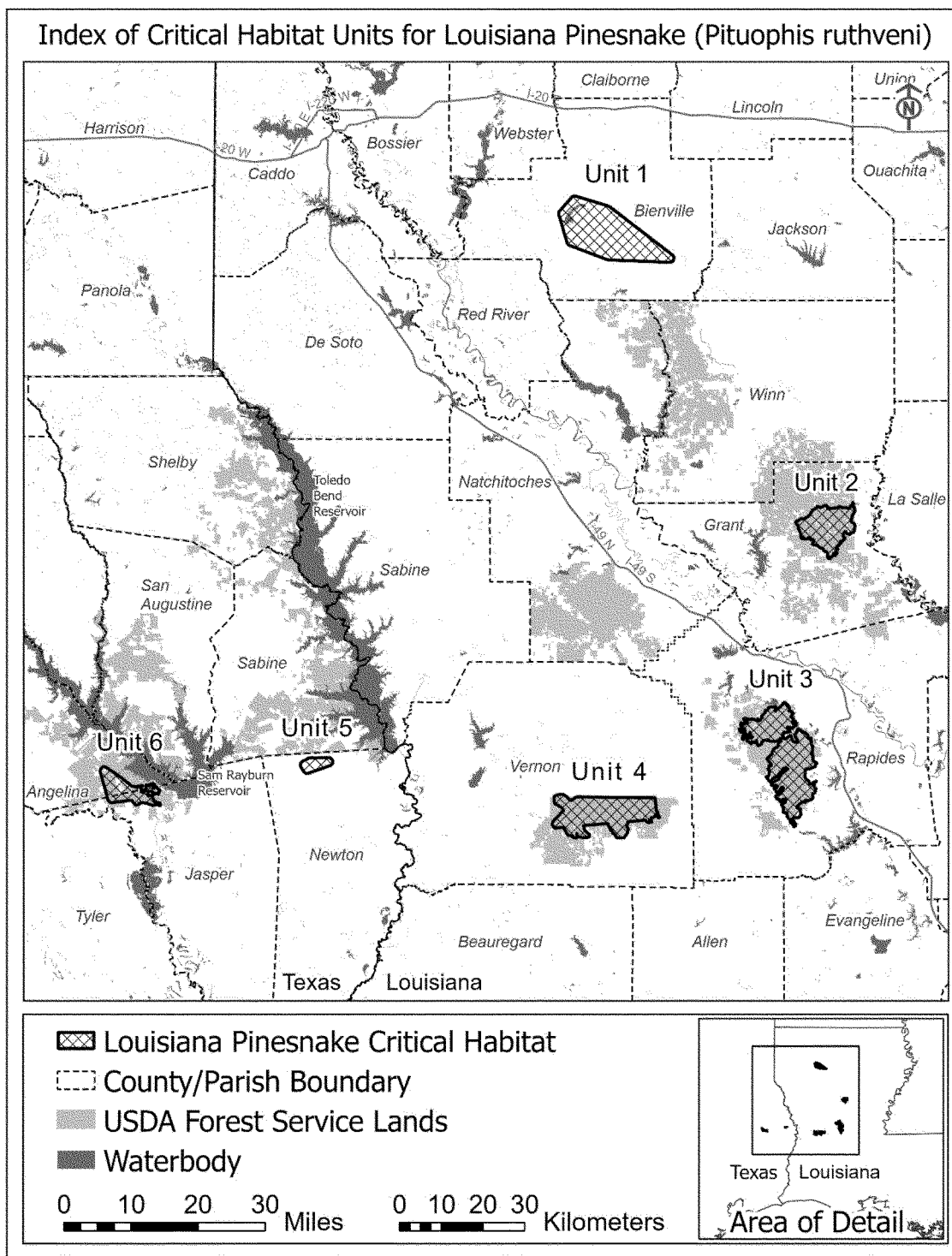
(4) Data layers defining map units were created with the U.S. Geological Survey’s National Hydrography Dataset flowline data and the USFS Geodata

Clearinghouse on a base map of roads and State and County boundaries from the U.S. Census Bureau Topologically Integrated Geographic Encoding and Referencing database files. Critical habitat units were mapped using the Geographic Coordinate System North American 1983 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service’s internet site at <https://www.regulations.gov> at Docket No. FWS–R4–ES–2021–0166, and at the field office responsible for this designation. 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.

**BILLING CODE 4333–15–P**

(5) Index map follows:

Figure 1 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (5)



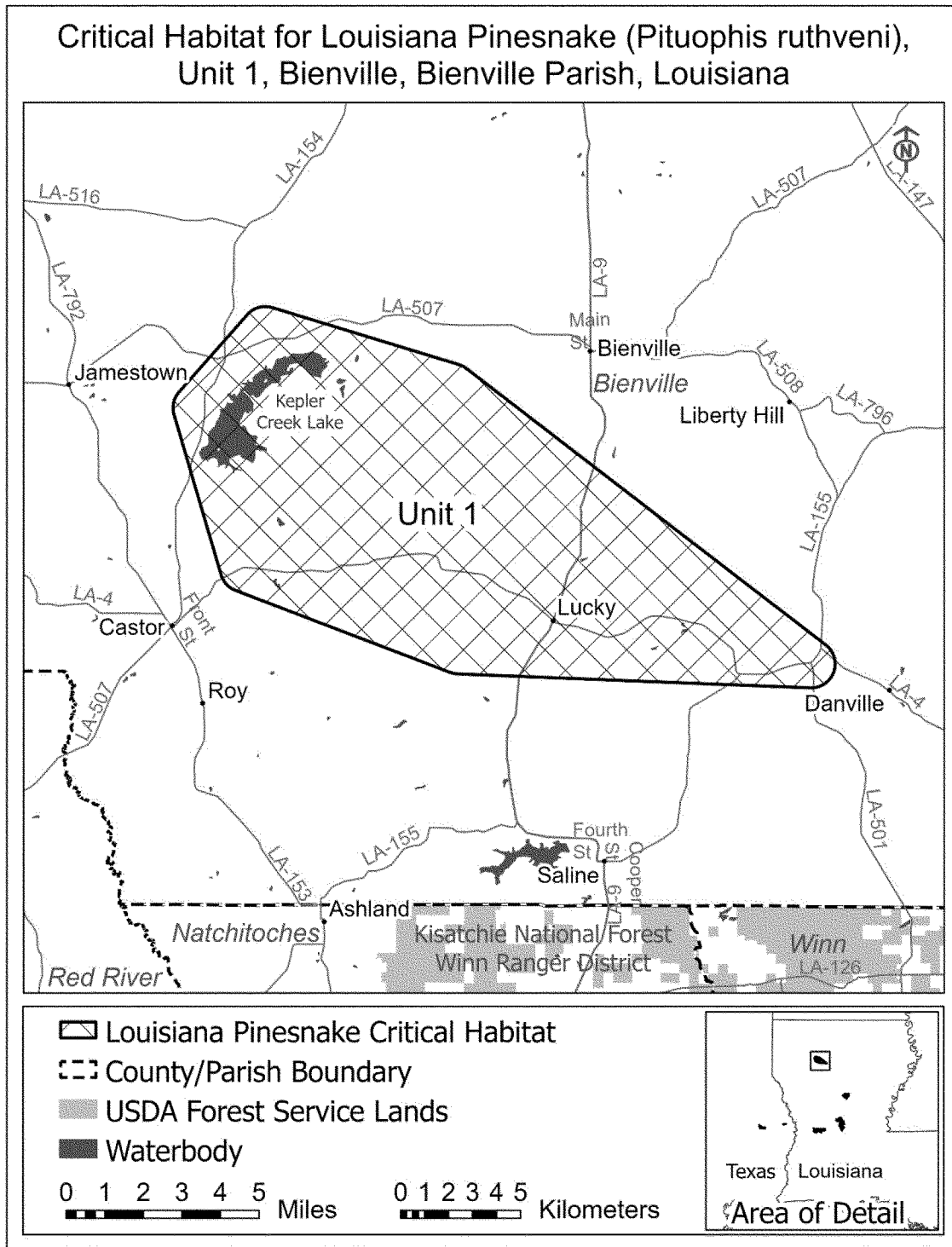
(6) Unit 1: Bienville, Bienville Parish, Louisiana.

(i) Unit 1 consists of 61,083 acres (ac) (24,720 hectares (ha)) west of Highway 155 and east of Highway 507,

approximately 40 miles (64 kilometers) southeast of Shreveport, Louisiana, in Bienville Parish, Louisiana. Unit 1 is composed of lands in State (333 ac (135

ha)) and private (60,750 ac (24,585 ha)) ownership.

(ii) Map of Unit 1 follows: Figure 2 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (6)(ii)

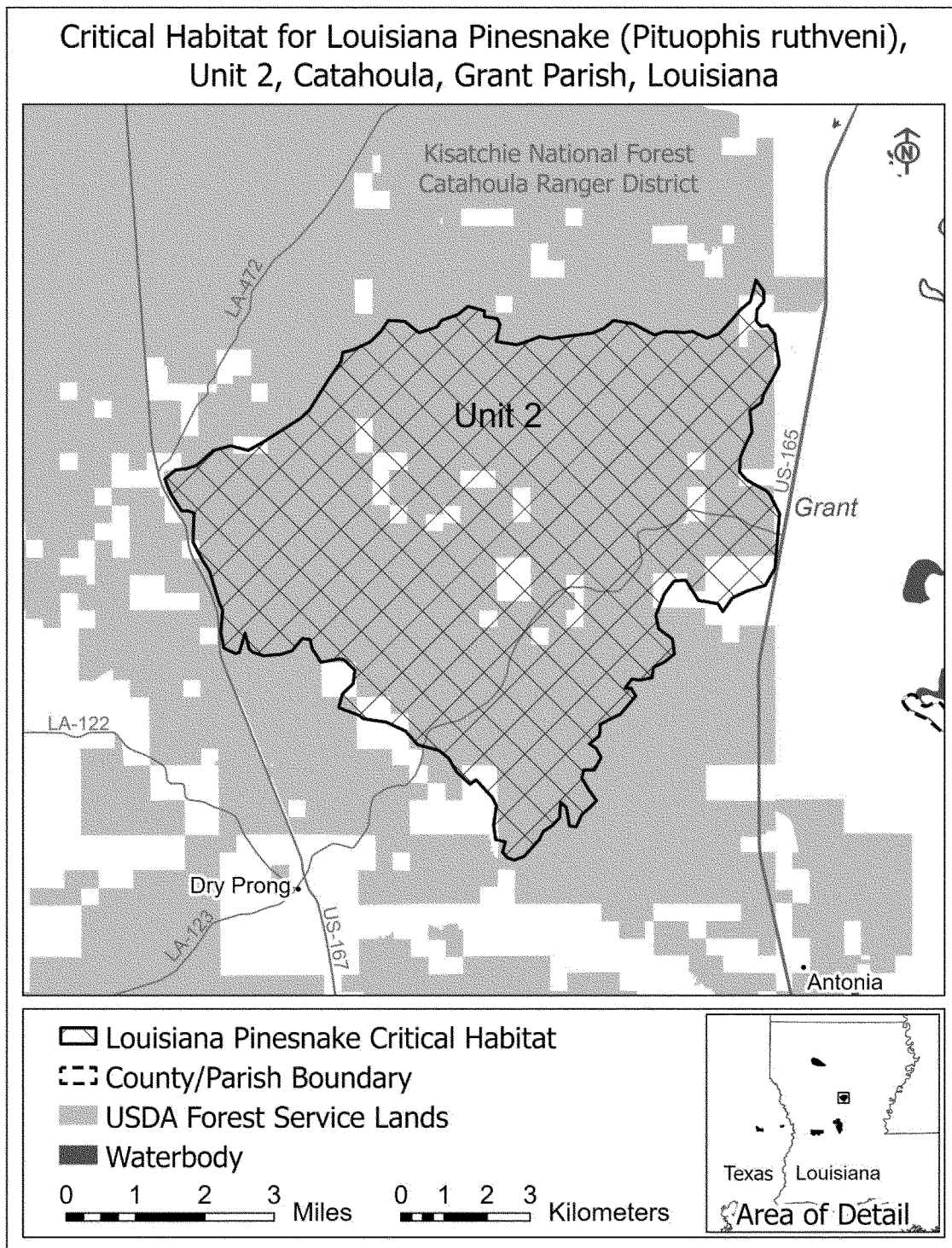


(7) Unit 2: Catahoula, Grant Parish, Louisiana.

(i) Unit 2 consists of 26,403 ac (10,685 ha) east of U.S. Highway 167 and west

of U.S. Highway 165 in Grant Parish, Louisiana, including lands in Federal (24,436 ac (9,889 ha)) and private (1,967 ac (796 ha)) ownership.

(ii) Map of Unit 2 follows: Figure 3 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (7)(ii)



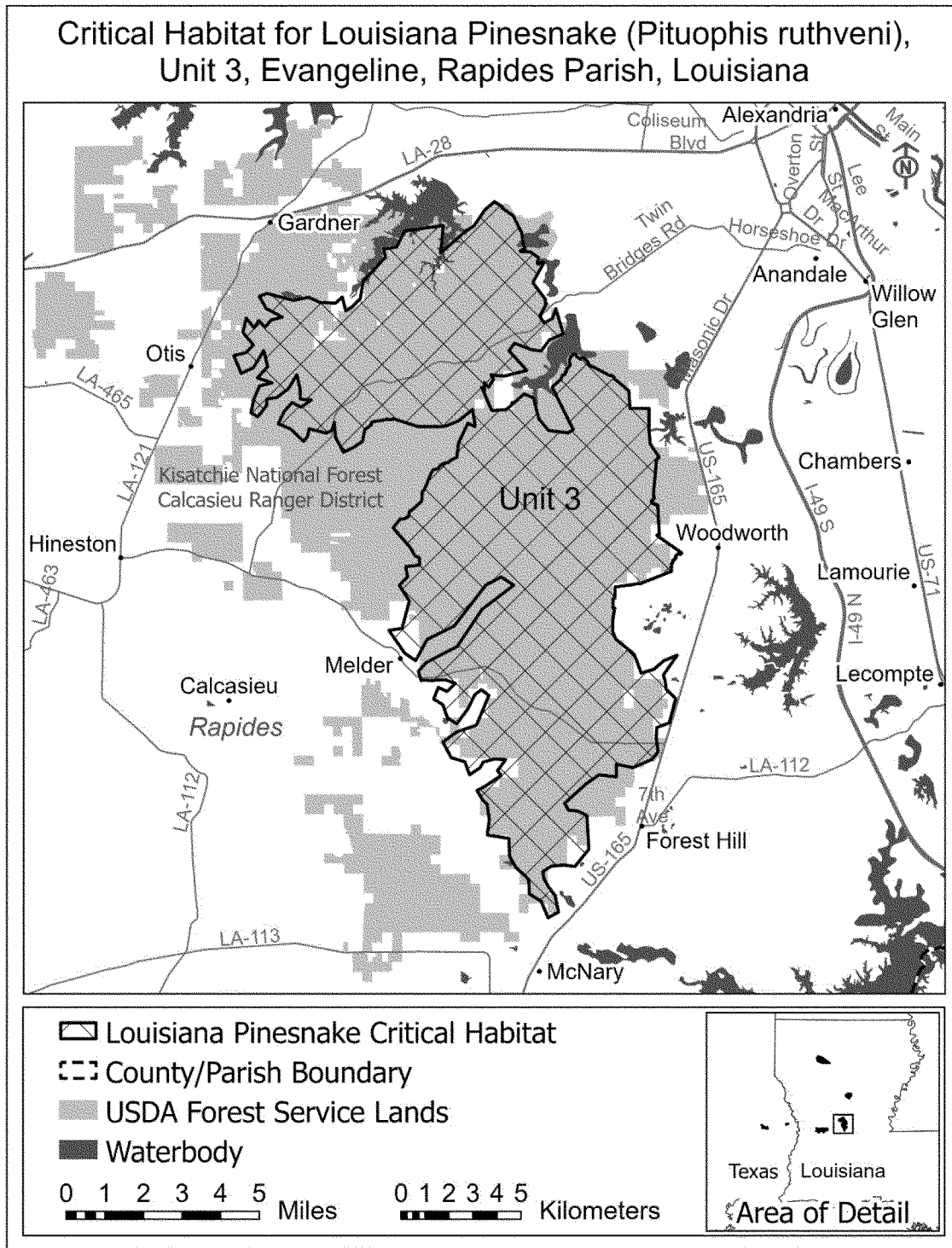
(8) Unit 3: Evangeline, Rapides Parish, Louisiana.

(i) Unit 3 consists of 57,223 ac (23,157 ha) approximately 10 miles (16 kilometers) southwest of Alexandria,

Louisiana, in Rapides Parish, Louisiana, including lands in Federal (54,507 ac (22,058 ha)) and private (2,716 ac (1,099 ha)) ownership.

(ii) Map of Unit 3 follows:

Figure 4 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (8)(ii)



(9) Unit 4: Fort Polk/Vernon, Vernon Parish, Louisiana.

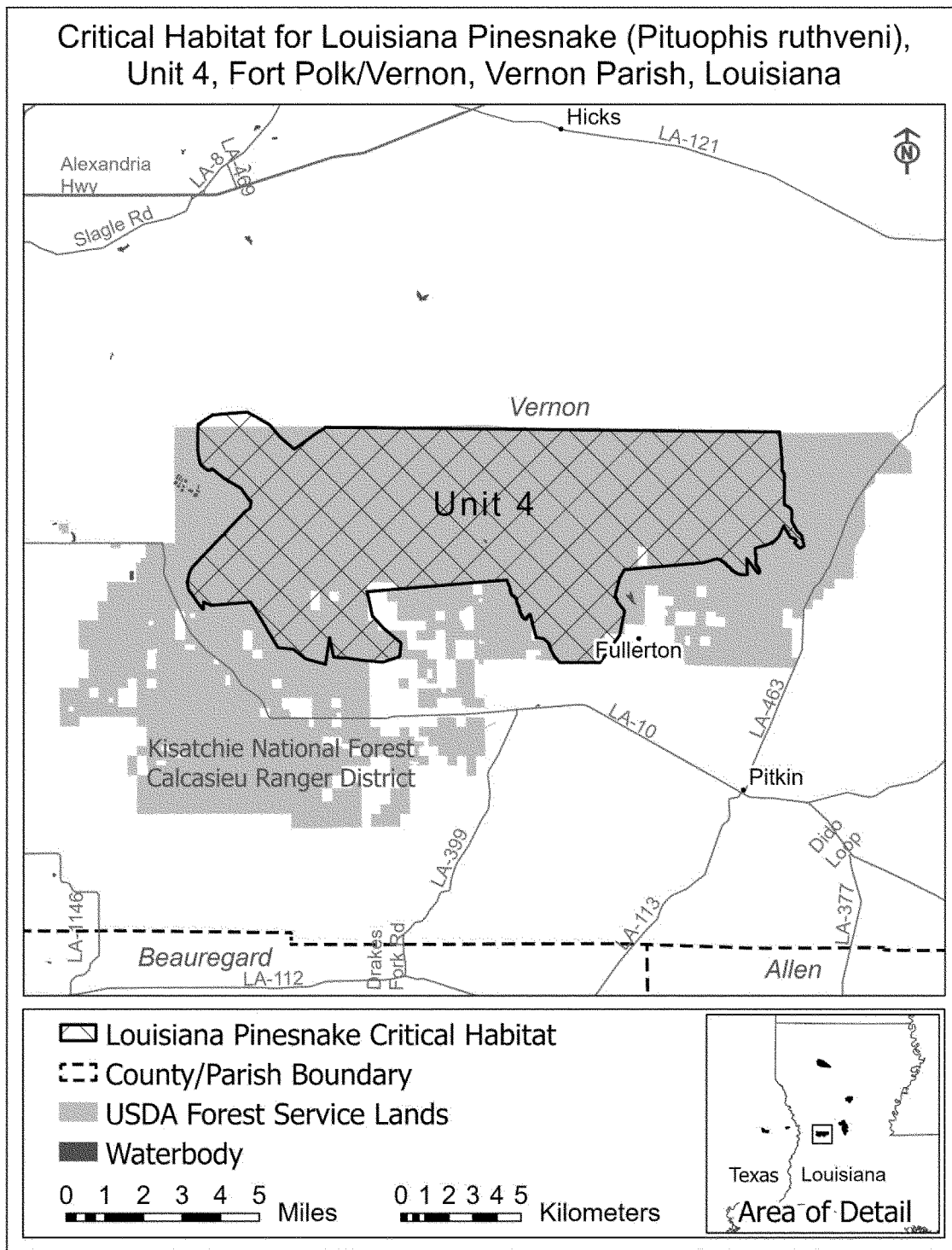
(i) Unit 4 consists of 43,789 ac (17,721 ha) approximately 12 miles (19 kilometers) northeast of Pitkin,

Louisiana, and 12 miles south of Hicks, Louisiana, in Vernon Parish, Louisiana, including lands in Federal (42,897 ac (17,360 ha)) and private (892 ac (361 ha)) ownership.

(ii) Map of Unit 4 follows:

Figure 5 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (9)(ii)



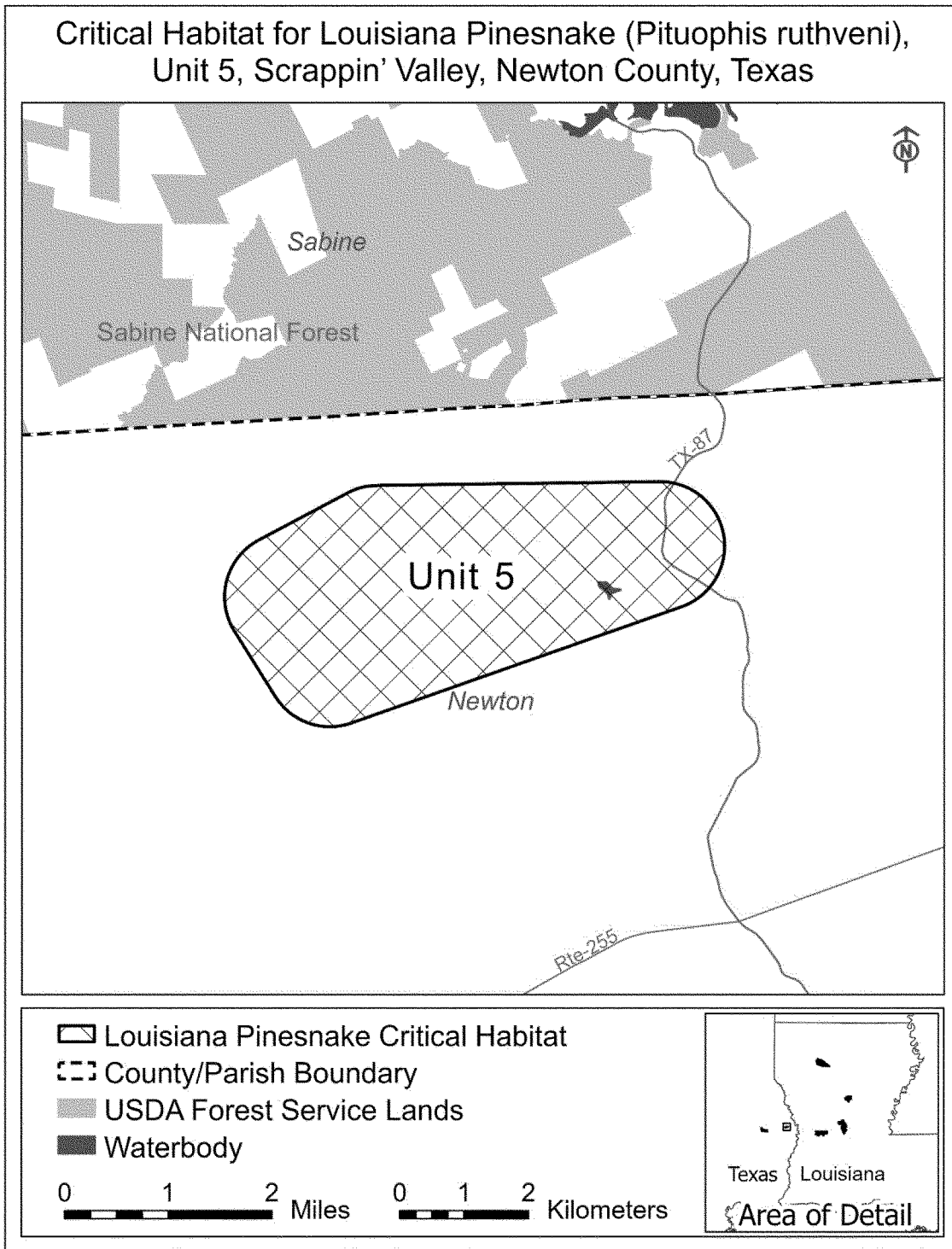


(10) Unit 5: Scrappin' Valley, Newton County, Texas.

(i) Unit 5 consists of 5,058 ac (2,047 ha) west of Texas State Highway 87 and

north of Texas Recreational Road 255 in Newton County, Texas. Unit 5 is composed of lands in private ownership.

(ii) Map of Unit 5 follows: Figure 6 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (10)(ii)



(11) Unit 6: Angelina, Angelina and Jasper Counties, Texas.

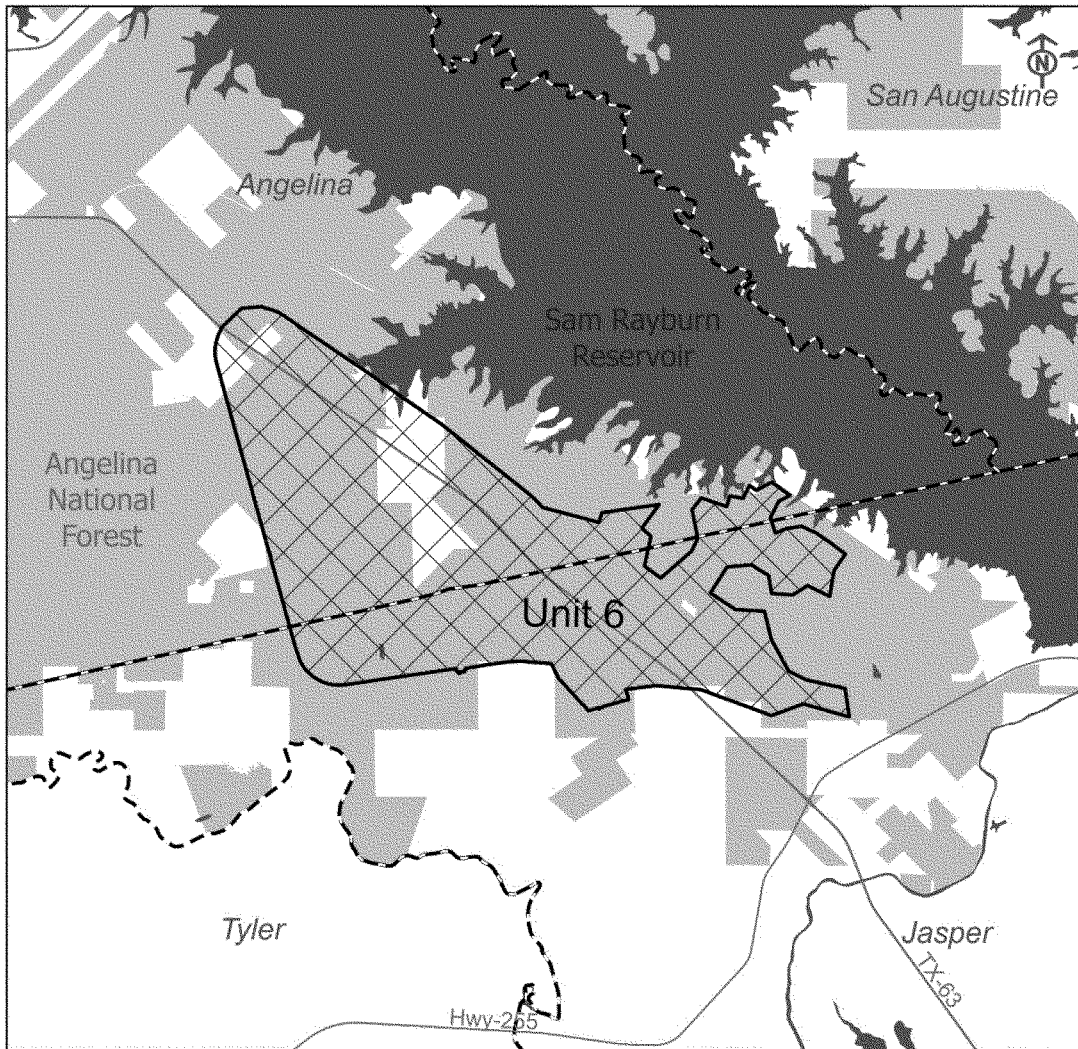
(i) Unit 6 consists of 15,966 ac (6,461 ha) approximately 7 miles (11 kilometers) southeast of Zavalla, Texas,





in southeastern Angelina and northwestern Jasper Counties, Texas, including lands in Federal (14,424 ac (5,837 ha)) and private (1,542 ac (624 ha)) ownership.

(ii) Map of Unit 6 follows:

Figure 7 to Louisiana Pinesnake (*Pituophis ruthveni*) paragraph (11)(ii)

### Critical Habitat for Louisiana Pinesnake (*Pituophis ruthveni*), Unit 6, Angelina, Angelina & Jasper Counties, Texas



-  Louisiana Pinesnake Critical Habitat
-  County/Parish Boundary
-  USDA Forest Service Lands
-  Waterbody

0 1 2 3 Miles

0 1 2 3 Kilometers



\* \* \* \* \*

**Martha Williams,**

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022-21333 Filed 10-5-22; 8:45 am]

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****[Docket No. FWS-R8-ES-2022-0083;  
FF09E21000 FXES1111090FEDR 223]****RIN 1018-BF84****Endangered and Threatened Wildlife  
and Plants; Endangered Species  
Status for Lassics Lupine and  
Designation of Critical Habitat****AGENCY:** Fish and Wildlife Service,  
Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list the Lassics lupine (*Lupinus constancei*), a plant species native to northern California, as an endangered species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the Lassics lupine. After a review of the best available scientific and commercial information, we find that listing the species is warranted. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act's protections to the species. We also propose to designate critical habitat for the Lassics lupine under the Act. In total, approximately 512 acres (ac) (207 hectares (ha)) in Humboldt and Trinity Counties, California, fall within the boundaries of the proposed critical habitat designation. In addition, we announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Lassics lupine.

**DATES:** We will accept comments received or postmarked on or before December 5, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 21, 2022.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R8-ES-2022-0083, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R8-ES-2022-0083, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Availability of supporting materials:* For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at <https://www.regulations.gov> at Docket No. FWS-R8-ES-2022-0083 and on the Service's website at <https://www.fws.gov/office/arcata-fish-and-wildlife>. Additional supporting information that we developed for this critical habitat designation will be available on the Service's website, at <https://www.regulations.gov>, or both.

**FOR FURTHER INFORMATION CONTACT:** Tanya Sommer, Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521; telephone 707-822-7201. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:****Executive Summary**

*Why we need to publish a rule.* Under the Act, a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a

significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Lassics lupine meets the definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and designating critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process.

*What this document does.* We propose to list the Lassics lupine as an endangered species under the Act, and we propose the designation of critical habitat for the species.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Lassics lupine is in danger of extinction primarily due to woody vegetation encroachment, pre-dispersal seed predation, fire, and reduced soil moisture due to drought associated with ongoing climate change.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.