

512. This includes the materials for which confidentiality is being requested (as explained in more detail below); supporting information, pursuant to part 512.8; and a certificate, pursuant to part 512.4(b) and part 512, appendix A.

You are required to submit to the Office of Chief Counsel one unredacted “confidential version” of the information for which you are seeking confidential treatment. Pursuant to part 512.6, the words “ENTIRE PAGE CONFIDENTIAL BUSINESS INFORMATION” or “CONFIDENTIAL BUSINESS INFORMATION CONTAINED WITHIN BRACKETS” (as applicable) must appear at the top of each page containing information claimed to be confidential. In the latter situation, where not all information on the page is claimed to be confidential, identify each item of information for which confidentiality is requested within brackets: “[].”

You are also required to submit to the Office of Chief Counsel one redacted “public version” of the information for which you are seeking confidential treatment. Pursuant to part 512.5(a)(2), the redacted “public version” should include redactions of any information for which you are seeking confidential treatment (*i.e.*, the only information that should be unredacted is information for which you are not seeking confidential treatment).

NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. Please do not send a hardcopy of a request for confidential treatment to NHTSA’s headquarters. The request should be sent to Dan Rabinovitz in the Office of the Chief Counsel at Daniel.Rabinovitz@dot.gov. You may either submit your request via email or request a secure file transfer link. If you are submitting the request via email, please also email a courtesy copy of the request to John Piazza at John.Piazza@dot.gov.

Will the Agency consider late comments?

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that the docket receives after that date. If the docket receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by the docket at the address given above under **ADDRESSES**. The hours of the docket are indicated above in the same location. You may also see the comments on the internet. To read the comments on the internet, go to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material. You can arrange with the docket to be notified when others file comments in the docket. See www.regulations.gov for more information.

Issued under authority delegated in 49 CFR 1.95 and 501.5.

Sophie Shulman,

Deputy Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2023–0224;
FXES1111090FEDR–245–FF09E21000]

RIN 1018–BE32

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Barrens Topminnow

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 Barrens topminnow (*Fundulus julisia*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1.5 acres (0.6 hectares) of spring pool and 11.4 miles (18.3 kilometers) of spring run in Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the Barrens topminnow.

DATES: We will accept comments received or postmarked on or before September 9, 2024. 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 August 23, 2024.

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–2023–0224, 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, click on 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–2023–0224, 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 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.fws.gov/office/tennessee-ecological-services> and at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2023–0224.

FOR FURTHER INFORMATION CONTACT: Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481. 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. Please see Docket No. FWS–R4–ES–2023–0224 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish a rule. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Designation of critical habitat can only be completed by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose the designation of critical habitat for the Barrens topminnow. The Barrens topminnow was listed as an endangered species under the Act on November 20, 2019 (see 84 FR 56131; October 21, 2019).

The basis for our action. Under section 4(a)(3) of the Act, if we determine that a species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. 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 of the Interior (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.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that we designate critical habitat at the time a species is determined to be an endangered or threatened species, to the maximum extent prudent and determinable. On January 4, 2018, the Service published a proposed rule to list the Barrens topminnow as an endangered species under the Act (83 FR 490). At the time of the proposed listing rule, the Service found that critical habitat was prudent but could not be determined until a careful assessment of the economic impacts that may occur due to a critical habitat designation was completed. The final listing rule (84 FR 56131; October 21, 2019) affirmed that the designation

of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking.

In accordance with section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19, we prepared an analysis of the economic impacts of the proposed critical habitat designation. In this proposed rule, we announce the availability of the draft economic analysis for public review and comment.

Peer Review

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 appropriate specialists regarding our 2017 species status assessment (SSA) report (Service 2017, entire), which informed this proposed rule. In addition to the peer review conducted on the 2017 SSA report, we are seeking comments from independent specialists during the public comment period on this proposed rule (see **DATES**, above). The purpose of peer review is to ensure that our designation is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in fish biology, habitat, and stressors or factors negatively affecting the species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific 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) Historical and current range, including distribution patterns and the locations of any additional populations of Barrens topminnow.

(2) Specific information on:

(a) The amount and distribution of Barrens topminnow habitat;

(b) Any additional areas occurring within the range of the species, *i.e.*, Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, that should be included in the designation because they (i) are 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 protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

(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; and

(d) Whether areas not occupied at the time of listing qualify as habitat for the species and are essential for the conservation of the species.

(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.

(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. Please see *Consideration of Other Relevant Impacts*, below, for information on areas for which the Service's Partners for Fish and Wildlife is developing conservation agreements; if you think we should exclude any of these areas, or any other areas, from the designation of critical habitat for the Barrens topminnow, 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.

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 data 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>.

Our final critical habitat designation may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Our final designation may not include all areas proposed if we determine they do not meet the definition of critical habitat, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

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 January 4, 2018, we published a proposed rule in the **Federal Register** (83 FR 490) to list the Barrens topminnow as an endangered species under the Act. At the time of our proposal, we determined that designation of critical habitat was prudent but not determinable because specific information needed to analyze the impacts of designation was lacking. We published the final listing rule on October 21, 2019 (84 FR 56131). Please refer to the proposed and final listing rules (83 FR 490, January 4, 2018; 84 FR 56131, October 21, 2019) for a detailed description of previous Federal actions concerning this freshwater fish species.

Background

Critical Habitat

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 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. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to 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 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 from the SSA report and information developed during the listing process for the species. Additional information sources may include 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.

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 from 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 which may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to 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 of 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.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of Barrens topminnow from studies of this species' habitat, ecology, and life history as described in the SSA report (Service 2017, entire); January 4, 2018, proposed listing rule (83 FR 490); and October 21, 2019, final listing rule (84 FR 56131). As described in the SSA report and listing rules, Barrens topminnows spawn in filamentous algae near the water surface, between April and August, with peak activity occurring from May to June. While the maximum age of the Barrens topminnow is 4 years, adults typically live for 2 years or less, and only about one-third of individuals spawn more than one season (Rakes 1989, p. 42; Etnier and Starnes 1993, p. 366). Prey items consumed by Barrens topminnows consist predominantly of microcrustaceans and immature aquatic insect larvae. However, the species is a generalist feeder, also consuming small snails and terrestrial organisms such as ants and other insects that fall or wander into aquatic habitats (Rakes 1989, pp. 18–25).

Barrens topminnow habitat is restricted to springhead pools and slow-flowing areas of spring runs on the Barrens Plateau in middle Tennessee. This species is known to have occurred historically at 18 sites, but likely occurred at more sites that were not surveyed prior to topminnow extirpation. These fish are strongly associated with abundant native aquatic vegetation, which they use for cover and as spawning substrate (Service 2017, pp. 7–9). Spawning occurs primarily over clumps of filamentous algae (*Cladophora* and *Pithophora* species). Recently deposited eggs are nearly

colorless and well camouflaged among the many air bubbles generated during photosynthesis and trapped in the algae (Rakes 1989, pp. 29–30). In addition to clumps of algae, plants used by Barrens topminnows for cover include watercress (*Nasturtium officinale*), rushes (*Juncus*), pondweed (*Potamogeton*), and eelgrass (*Valisneria*) (Service 2017, p. 7). Barrens topminnows have only been found in streams where the predominant source of base flow is groundwater. Due to the groundwater influence of these habitats, temperatures are relatively stable, ranging from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F)) (Service, p. 7). Barrens topminnows only occur in and are adapted to surface streams predominantly fed by adjacent groundwater sources and typically are clear during baseflow. In unaltered landscapes, turbidity increases in these streams are temporary, resulting from inputs of sediments and nutrients in runoff following precipitation events. Because Barrens topminnows are adapted to clear groundwater-fed streams, use visual cues such as sunlight and male coloration (Rakes 1989, p. 35) for spawning, and rely in part on eyesight to chase prey (Rakes 1989, p. 18), long periods of elevated turbidity may negatively impact populations.

The primary habitat elements that influence resiliency of the Barrens topminnow include water quality, water persistence, and submerged or overhanging plant cover. We have determined that the following physical or biological features are essential to the conservation of the Barrens topminnow:

- (1) Groundwater-fed, first or second order streams and springs that persist annually;
- (2) Water temperature ranging from 15 to 25 °C (59 to 77 °F);
- (3) Water during base flow with limited turbidity that is sufficiently clear for individuals to see spawning and feeding cues;
- (4) Submerged native aquatic plants, such as *Cladophora* and *Pithophora* species, watercress (*Nasturtium officinale*), rushes (*Juncus* spp.), pondweed (*Potamogeton* spp.), and eelgrass (*Vallisneria* spp.), or overhanging terrestrial plants and submerged plant roots, to provide cover and surfaces for spawning; and
- (5) A prey base of microcrustaceans and small aquatic insects such as chironomids (midges).

Special Management Considerations

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 Barrens topminnow may require special management considerations or protection to reduce the following threats: (1) Landscape conversion, including (but not limited to) urban, commercial, and agricultural use, and infrastructure (roads, bridges, utilities); (2) urban and agricultural water uses (water supply reservoirs, wastewater treatment, etc.); (3) significant alteration of water quality; (4) impacts from invasive species; and (5) changes and shifts in seasonal precipitation patterns as a result of climate change.

Management activities that could help ameliorate these threats include, but are not limited to, the following: (1) Use of best management practices to limit or reduce sedimentation (suspended sediment influxes), such as those provided in the Tennessee Department of Environment and Conservation (TDEC) Erosion and Sediment Control Handbook (TDEC 2012, entire); (2) retention of natural barriers, and maintenance or construction of barriers that isolate Barrens topminnows from invasive mosquitofish; and (3) installation of wells to provide a groundwater source of surface water at drought-sensitive sites.

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. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate one specific area outside the geographical area occupied by the species because we have determined that the area are essential for the conservation of the species (see *Areas Outside the Geographic Area Occupied at the Time of Listing*, below).

The Barrens topminnow has a naturally limited range, and its current distribution is much reduced from its historical distribution. Meeting the conservation and recovery needs of the

species will require continued protection of existing populations and habitat, as well as management to ensure there are adequate numbers of individuals in stable populations at sites in native watersheds where mosquitofish are, or can be, excluded. This approach will reduce the likelihood that catastrophic events, such as extreme droughts or introduction/invasion of mosquitofish at an occupied site, do not simultaneously affect all known populations to the same extent. In addition, rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this proposed critical habitat designation.

Areas Occupied at the Time of Listing

We identified all spring pools (pond-like, with little or no flow) and spring runs (groundwater-fed, flowing surface water) that supported populations of the Barrens topminnow at the time of listing. Rangewide sampling undertaken at 37 spring sites since 2013 (Tennessee Aquarium Conservation Institute (TNACI) 2014, p. 11; TNACI 2017, p. 3) verified the current occurrence of Barrens topminnow at six sites (Service 2017, p. 12): Benedict Spring, Big Spring (Merkle), McMahan Creek, Marcum Spring, Short Spring, and Greenbrook Pond. The species has been shown in intermittent surveys over several decades to persist at these sites.

In 2023, a population of Barrens topminnow was discovered in Pepper Hollow Branch, Grundy County, Tennessee. At the time of listing in 2019, Barrens topminnows were not known to occupy Pepper Hollow Branch. This stream is at the eastern edge of the Barrens Plateau and has not been well surveyed. Given this stream's proximity to the previously known range of the Barrens topminnow and, until recently, scarcity of reported fish surveys, it is very likely the newly discovered population is native and was not introduced after the time of listing. As such, there is little uncertainty that Barrens topminnows were present in Pepper Hollow Branch at the time of listing, and we include the stream in our proposed critical habitat designation. Mosquitofish are not present in Pepper Hollow Branch, although no barriers to potential mosquitofish incursions have been observed. This area also increases the species' viability, which is essential for the conservation of the Barrens topminnow. All five physical or biological features essential to the conservation of the species are present in Pepper Hollow Branch.

One occupied site, Greenbrook Pond, contains an introduced population (present at the time of listing) outside the historical range of the species, but within the middle portion of the Caney Fork River watershed, the upper portions of which are in the species' historical range. All sites occupied at the time of listing (Benedict Spring, Big Spring (Merkle), McMahan Creek, Marcum Spring, Short Spring, Greenbrook Pond, and Pepper Hollow Branch) currently have all five essential physical or biological features for Barrens topminnow populations. Importantly, all occupied sites except Big Spring (Merkle) are currently free of mosquitofish, and five of the six sites without mosquitofish have a barrier to mosquitofish invasion. Barrens topminnows were thought to be potentially extirpated from Big Spring (Merkle) but were re-documented at this site on February 16, 2018 (captured and released on February 15, 2018) (Neely 2018, pers. comm.). Although Big Spring (Merkle) is not free of mosquitofish and lacks a barrier to further mosquitofish invasion, topminnows in the spring appear to outnumber mosquitofish.

Areas Outside the Geographic Area Occupied at the Time of Listing

We are proposing to designate one area outside the geographical area occupied at the time of listing by the species, Verville Spring because the area is essential for the conservation of the Barrens topminnow. Although it is not currently occupied, Verville Spring is within the Caney Fork River watershed where native populations of the Barrens topminnow occur. Verville Spring is on the Tennessee National Wildlife Refuge and sustained a population of introduced Caney Fork watershed Barrens topminnows from 2001 until 2011. However, the population succumbed to mosquitofish that, during a flood, circumvented a constructed barrier. It is feasible to remove all

mosquitofish and rebuild the barrier so that it is more robust. With a strong barrier to mosquitofish in place, restocking can occur, establishing a new population. Reestablishing the population would increase Barrens topminnow redundancy, resiliency, and viability, promoting conservation and increasing the likelihood species recovery. Without the habitat provided by the unoccupied area, species recovery and conservation are less likely to be attained. All five physical or biological features essential to Barrens topminnow conservation are present in Verville Spring, which is habitat for the species because it provides adequate cover from predation, food resources, substrate (aquatic vegetation) for successful spawning and recruitment, and water quality that meets the species' physiological needs. The upper ends of all proposed critical habitat units are demarcated by the place where surface water emerges from the ground to form the head of the spring, or where permanent flow begins, which is approximately the location of the upstream-most record of Barrens topminnow in each proposed unit. Except for Big Spring (Merkle) and Pepper Hollow Branch, the downstream ends of the proposed units are demarcated by a barrier to mosquitofish. The downstream ends of critical habitat at Big Spring (Merkle) and Pepper Hollow Branch are approximately the location of the downstream-most record of Barrens topminnow.

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 essential physical or biological features. 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.

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. All proposed units contain all of the identified physical or biological features and support multiple life-history processes. 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-2023-0224, on our internet site (<https://www.fws.gov/office/tennessee-ecological-services>), and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We propose to designate approximately 1.5 acres (ac) (0.6 hectares (ha)) of spring pool and 11.4 miles (mi) (18.3 kilometers (km)) of spring run in eight units as critical habitat for the Barrens topminnow. The table below shows the name, land ownership of the riparian areas surrounding the units, and surface area (for spring pools) or length (for stream runs) of the proposed units. Ownership of spring run and spring pool bottoms is determined by the adjacent riparian land ownership. These riparian areas are not part of the proposed critical habitat designation.

TABLE OF PROPOSED CRITICAL HABITAT UNIT OCCUPANCY STATUS, LAND OWNERSHIP, AND SIZE

Critical habitat unit	Occupied at time of listing?	Land ownership by type	Length or area of unit in miles (kilometers) or acres (hectares)
1. McMahan Creek	Yes	Private	0.8 mi (1.3 km).
2. Benedict Spring	Yes	Private	0.1 ac (0.04 ha).
3. Short Spring	Yes	City of Tullahoma	1.0 ac (0.4 ha).
4. Verville Spring	No	Federal	0.2 mi (0.3 km).
5. Marcum Spring	Yes	Private	0.6 mi (0.9 km).
6. Greenbrook Pond	Yes	City of Smithville	0.1 mi (0.16 km); 0.4 ac (0.16 ha).
7. Big Spring (Merkle)	Yes	Private	0.5 mi (0.85 km).
8. Pepper Hollow Branch	Yes	Private	9.2 mi (14.8 km).
Total pool area	1.5 ac (0.6 ha).
Total stream length	11.4 mi (18.3 km).

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

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

Unit 1: McMahan Creek

Unit 1, a spring run, consists of 0.8 mi (1.3 km) of McMahan Creek in Cannon County. The upstream end of the unit is at the confluence of the source spring run (unnamed) and McMahan Creek, just north of the Woodland Estates subdivision. The downstream end is to the south, where McMahan Creek goes under Geedsville Road. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address sediment washing into the creek from adjacent pasture and residential areas. Fencing would reduce the likelihood of livestock trampling instream vegetation, although adjacent lands are used for grazing only intermittently. A concrete box culvert at the Geedsville Road crossing at the downstream end of the unit is a barrier to mosquitofish. Any future roadway maintenance or construction at the crossing would require leaving the culvert intact or, in the case of culvert replacement or modification, ensuring an alternative barrier persists to prevent mosquitofish invasion.

Unit 2: Benedict Spring

Unit 2 is a 0.1-ac (0.04-ha) spring pool in Coffee County, just north of Highway 55, between Summitville Road to the west and Summit Breeze Lane to the east. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address drying of the spring pond. In 2006, 2007, 2008, 2010, and 2016, the spring became almost completely dry, and topminnows had to be rescued (TNACI 2014, p. 11; Service 2017, p. 20). They were returned to the spring on each occasion, after drought subsided. Installation of a well with a pump,

employed during droughts, would prevent the need to rescue topminnows. Assurance of a constant water supply to the spring pool during drought would reduce stress on the topminnow population in proposed Unit 2, which otherwise will continue to endure frequent periods of drought-induced stress due to elevated temperature, lowered dissolved oxygen, enhanced depredation, and handling necessary for rescue efforts.

Unit 3: Short Spring

Unit 3 is a 1.0-ac (0.4-ha) spring pool in the city of Tullahoma, in Coffee County, just west of Short Springs Road and just north of the Short Springs Natural Area. The spring pool is formed by a concrete dam and feeds a short, approximately 0.1-mile (0.16-km) spring run that feeds Bobo Creek. The city owns the unit, and the natural area is State-owned. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow.

Special management considerations may be required for Unit 3. For example, controlling access to the unit for fishing may reduce the likelihood of introductions of bait bucket species, including mosquitofish, that can compete with or prey upon topminnows.

Unit 4: Vervilla Spring

Unit 4, in Warren County, is a 0.2-mile (0.3-km) reach consisting of a series of spring pools and intervening spring run, with its downstream end at the Hickory Creek Confluence, just upstream of the confluence of Hickory Creek and West Fork Hickory Creek. The unit is entirely within a parcel of the Tennessee National Wildlife Refuge, owned and managed by the U.S. Fish and Wildlife Service. This unit was historically occupied but is currently unoccupied by the Barrens topminnow, and it is essential for the conservation of the species. Adding a population of Barrens topminnow to this unoccupied unit, after raising the level of the dam and removing mosquitofish, would increase the species' resiliency and redundancy as is necessary for the conservation and recovery of the species, and reduce the species' likelihood of extinction. In addition, this unit is habitat for the species; it contains all five physical or biological features essential to the conservation of the species.

Unit 5: Marcum Spring

Unit 5, in Coffee County, consists of an isolated spring pool and 0.6 mile (0.9 km) of intervening spring run and natural spring pool habitat that terminates in a small pond formed by a constructed impoundment. The downstream end of the unit (the impounded pool) is at Ovoca Road, where it empties to Ovoca Lake, a small-constructed impoundment on Carroll Creek. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is privately owned.

Special management considerations or protection may be required to address sediment washing into the spring from adjacent pasture and to address filling portions of the spring for off-road heavy machinery access, which has happened before (TNACI 2014, p. 15). In addition, maintaining existing fencing at the site would continue to keep livestock out of the stream.

Unit 6: Greenbrook Pond

Unit 6 consists of a 0.4-ac (0.16-ha) pond, which is an impounded spring pool, and 0.1 mi (0.16 km) of spring run at the pond outflow, in Greenbrook Park, in the city of Smithville, Dekalb County. This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. The riparian land adjacent to the unit is owned by the city of Smithville.

Special management considerations may be required for Unit 6. Because the unit is in a public park, access to the unit for collecting bait fish may need to be controlled, to reduce the likelihood of capturing topminnows or of releasing unused bait fish, including mosquitofish, that can compete with or prey upon topminnows.

Unit 7: Big Spring (Merkle)

Unit 7, in Franklin County, consists of a springhead and approximately 0.5 mi (0.85 km) of spring run. The spring is marked as Big Spring on topographic maps but is also referred to by the last name of the landowner at the spring head, Merkle. The unit lies on two private property parcels and is adjacent to a county road right-of-way.

The spring flows out of a springhead at the base of a hill and through fields used for row-crop agriculture. The stretch upstream of Georgia Crossing Road is surrounded by a row-crop field. Below Georgia Crossing Road, there is more riparian vegetation, and the stream runs adjacent to Hawkins Cove Road. Unit 7 terminates at the confluence with Miller Creek.

This unit was occupied at the time of listing and is currently occupied by the Barrens topminnow. In addition, the unit currently supports all breeding, feeding, and sheltering needs for the species and contains all of the physical or biological features essential to the conservation of the Barrens topminnow. Special management considerations may be required for streambank and riparian area conservation projects that may occur in Unit 7 in the future. The spring run has mostly been channelized and the banks cleared of vegetation. Portions of the spring run are occasionally dammed by beavers, creating more slackwater habitat and promoting aquatic vegetation growth.

Unit 8: Pepper Hollow Branch

Unit 8 consists of 9.2 mi (14.8 km) of Pepper Hollow Branch and its permanent tributary reaches upstream of the confluence with the Collins River, in Grundy County, Tennessee. The upstream end of the unit starts on mainstem Pepper Hollow Branch on the Cumberland Plateau, in a pine plantation, from which the stream flows into and through hardwood forest until it reaches the valley floor. Areas adjacent to Pepper Hollow Branch in the valley are used for nursery production. The unnamed tributaries feeding Pepper Hollow Branch are shaded and have a mix of riffles and pools with some aquatic vegetation along their margins. Tarlton Spring Run, the downstream-most tributary, contains abundant aquatic vegetation and flows through open fields in the valley. The riparian land adjacent to the unit consists of several privately owned parcels.

This unit is currently occupied by the Barrens topminnow but had not been surveyed and was not known to be occupied at the time of listing. This unit is essential for the conservation of the species, as this newly discovered population increases the species' resiliency and redundancy as is necessary for conservation and recovery of the species, and reduces the species' likelihood of extinction. In addition, this unit contains all five physical or biological features essential to the conservation of the species.

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.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species (50 CFR 402.02).

Compliance with the requirements of section 7(a)(2) of the Act 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 formal 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 reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (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 written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (e.g., land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

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 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 that our **Federal Register** notices "shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation." Activities that may be affected by designation of critical habitat for the Barrens topminnow include those that may affect the physical or biological features of the Barrens topminnow's critical habitat (see Physical or Biological Features Essential to the Conservation of the Species).

Exemptions

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

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 Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (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. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

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).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise 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. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial 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 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 supplements and reaffirms E.O. 12866 and E.O. 13563 and directs 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. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a “significant regulatory action” and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (section 3(f)(1) as amended by E.O. 14094). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Barrens topminnow is likely to exceed the economically significant threshold.

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 effects of the designation of critical habitat for the Barrens topminnow (IEC 2023, entire). 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 geographical 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 already 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 is also likely to 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. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any 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 Barrens topminnow; our DEA is summarized in the narrative below.

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 Barrens topminnow, first we identified, in the IEM dated October 19, 2022, probable incremental economic impacts associated with the following categories of activities: (1) bridge or highway construction and maintenance; (2) development and maintenance of utilities (e.g., pipelines); (3) agriculture; (4) water quality permitting; and (5) stream restoration. 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. The species was listed as endangered on November 20, 2019 (see 84 FR 56131; October 21, 2019). Therefore, in areas where the Barrens topminnow is present, under section 7 of the Act, Federal agencies are required to consult with the Service on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, our consultations 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 Barrens topminnow's critical habitat. The following specific circumstances 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 likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. 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.

The proposed critical habitat designation for the Barrens topminnow totals approximately 1.5 ac (0.6 ha) of spring pool and 11.4 mi (18.3 km) of spring run, which includes both occupied and unoccupied habitat. Within the currently occupied springs (proposed Units 1, 2, 3, 5, 6, 7, and 8), any actions that may affect the species would likely also affect proposed critical habitat and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. Thus, incremental project modifications resulting solely from the presence of occupied critical habitat are not anticipated. In total, approximately 21 section 7 consultations are anticipated to occur over the next 10 years in the occupied units, with total costs to the Service and action agencies of \$75,800, or approximately \$7,600 per year.

Within the unoccupied Vervilla Spring (proposed Unit 4), any future projects that may affect the Barrens topminnow or its critical habitat would result in section 7 consultation because the spring is on federally managed land. It is not clear that substantial project modifications to proposed Unit 4 would be required to accommodate critical habitat over and above what would already be anticipated to occur under the baseline. With or without critical habitat, this area will be managed for

Barrens topminnow conservation because the Service plans to reintroduce Barrens topminnow into this area. In other words, raising the height of the mosquitofish exclusion barrier and rehabilitating the unoccupied unit would have been completed to promote species recovery by improving the habitat prior to occupation by the Barrens topminnow regardless of a critical habitat designation. Nevertheless, the screening analysis assumed that raising the height of the mosquitofish barrier and rehabilitating unoccupied proposed Unit 4 is an incremental cost due to the designation of critical habitat. The Service estimates the one-time cost of barrier replacement at \$12,500. In addition to barrier replacement, according to the IEM, one new formal section 7 consultation considering only adverse modification is anticipated to occur in proposed Unit 4 during the next 10 years, at a cost of \$17,000. One informal consultation, with estimated administrative costs of \$8,000, is also anticipated for proposed Unit 4. Therefore, the total incremental cost for proposed Unit 4 is estimated at \$37,500 during the next 10 years, or approximately \$3,800 per year. The total incremental cost for all eight units is estimated at less than \$76,000 over the next 10 years, or \$7,600 per year. These costs would not reach the threshold of "significant" under E.O. 12866.

As noted above, in proposed Unit 8, which is occupied but was not known to be occupied at the time of listing, any actions that may affect the species would likely also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species.

We are soliciting data and comments from the public on the DEA discussed above. 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, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. 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), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of “critical habitat.” However, we 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 us 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.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Barrens topminnow are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

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 safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs) or “conservation benefit agreement” or “conservation agreement” (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)) or HCPs, 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.

In preparing this proposal, we have determined that no HCPs or other management plans for the Barrens topminnow currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national-security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation, and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of established conservation

agreements or impacts to trust resources.

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.

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

The Service’s Partners for Fish and Wildlife (PFW) program is developing conservation agreements with landowners at Benedict Spring and Greenbrook Pond, proposed Units 2 and 6, respectively. At Benedict Spring, a well would be developed and a pump installed to maintain a water supply that would keep the spring full during periods of drought to conserve the Barrens topminnow. Lands adjacent to the spring pool and spring run constituting the proposed Greenbrook Pond Unit would continue to be managed as a city park, under which the population of topminnows has persisted in high numbers. Therefore, as indicated in Information Requested, we are requesting information on whether the benefits of excluding any areas where PFW conservation agreements are developed may outweigh inclusion under section 4(b)(2) of the Act, and the Secretary may exclude these areas from the final designation of critical habitat for the Barrens topminnow.

If through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may

conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Correction

In this proposed rule, we include a correction to the final listing rule's citation in the entry for the Barrens topminnow in the List of Endangered and Threatened Wildlife (List) at 50 CFR 17.11(h). When the final listing rule published (84 FR 56131; October 21, 2019), in the "Listing citations and applicable rules" column of the List, the wrong volume number was included in the citation for the Barrens topminnow's listing rule. We reflect the corrected information under Proposed Regulation Promulgation, below. As explained at 50 CFR 17.11(f), the "Listing citations and applicable rules" column of the List is nonregulatory in nature and is provided for informational and navigational purposes only.

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, 13563, and 14094)

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis

should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. 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.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

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. The RFA does not require evaluation of 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, the 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 “to the extent permitted by law” when undertaking actions identified as significant energy actions. E.O. 13211 defines a “significant energy action” as an action that (i) is a significant regulatory action under E.O. 12866 (or any successor order, including most recently E.O. 14094); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

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

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

(1) This 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 are not likely to 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. One of the proposed critical habitat units is on federally owned land and five units are on private land, and thus these six units are not on property belonging to small governments. Two of the eight proposed units are on city property, but one is within a city park, while the other is within city boundaries and abuts a State natural area. Additionally, all proposed units are groundwater-fed pools or streams that are not suitable for development of buildings or housing.

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 Barrens topminnow 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 the Barrens topminnow, and it concludes that, if adopted as proposed, 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, the appropriate State resource agency in Tennessee. 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 State, or on the relationship between the national government and the State, 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 to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these 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) would be required.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the 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 elements of physical or biological features essential to the conservation of the species. The proposed areas of designated 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 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.)

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination With Indian Tribal Governments), the President’s memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), 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 Secretary’s 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. As discussed earlier in this document, we have determined that no Tribal lands

would be affected by this proposed critical habitat designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> under Docket No. FWS–R4–ES–2023–0224 and upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and Tennessee 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 further 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. In § 17.11, amend paragraph (h) by revising the entry for “Topminnow, Barrens” in the List of Endangered and Threatened Wildlife under FISHES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
* FISHES	*	*	*	*
* Topminnow, Barrens	* <i>Fundulus julisia</i>	* Wherever found	* E	* 84 FR 56131, 10/21/2019; 50 CFR 17.95(e). ^{CH}
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (e) by adding an entry for “Barrens Topminnow (*Fundulus julisia*)” immediately following the entry for “Spring Pygmy Sunfish (*Elassoma alabamæ*)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(e) *Fishes*.
* * * * *

Barrens Topminnow (*Fundulus julisia*)

(1) Critical habitat units are depicted for Cannon, Coffee, Dekalb, Franklin, Grundy, and Warren Counties, Tennessee, on the maps in this entry.

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

(i) Groundwater-fed, first or second order streams and springs that persist annually;

(ii) Water temperature ranging from 15 to 25 degrees Celsius (°C) (59 to 77 degrees Fahrenheit (°F));

(iii) Water during base flow with limited turbidity that is sufficiently clear for individuals to see spawning and feeding cues;

(iv) Submerged native aquatic plants, such as *Cladophora* and *Pithophora* species, watercress (*Nasturtium officinale*), rushes (*Juncus* spp.), pondweed (*Potamogeton* spp.), and eelgrass (*Vallisneria* spp.), or

overhanging terrestrial plants and submerged plant roots, to provide cover and surfaces for spawning; and

(v) A prey base of microcrustaceans and small aquatic insects such as chironomids (midges).

(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].

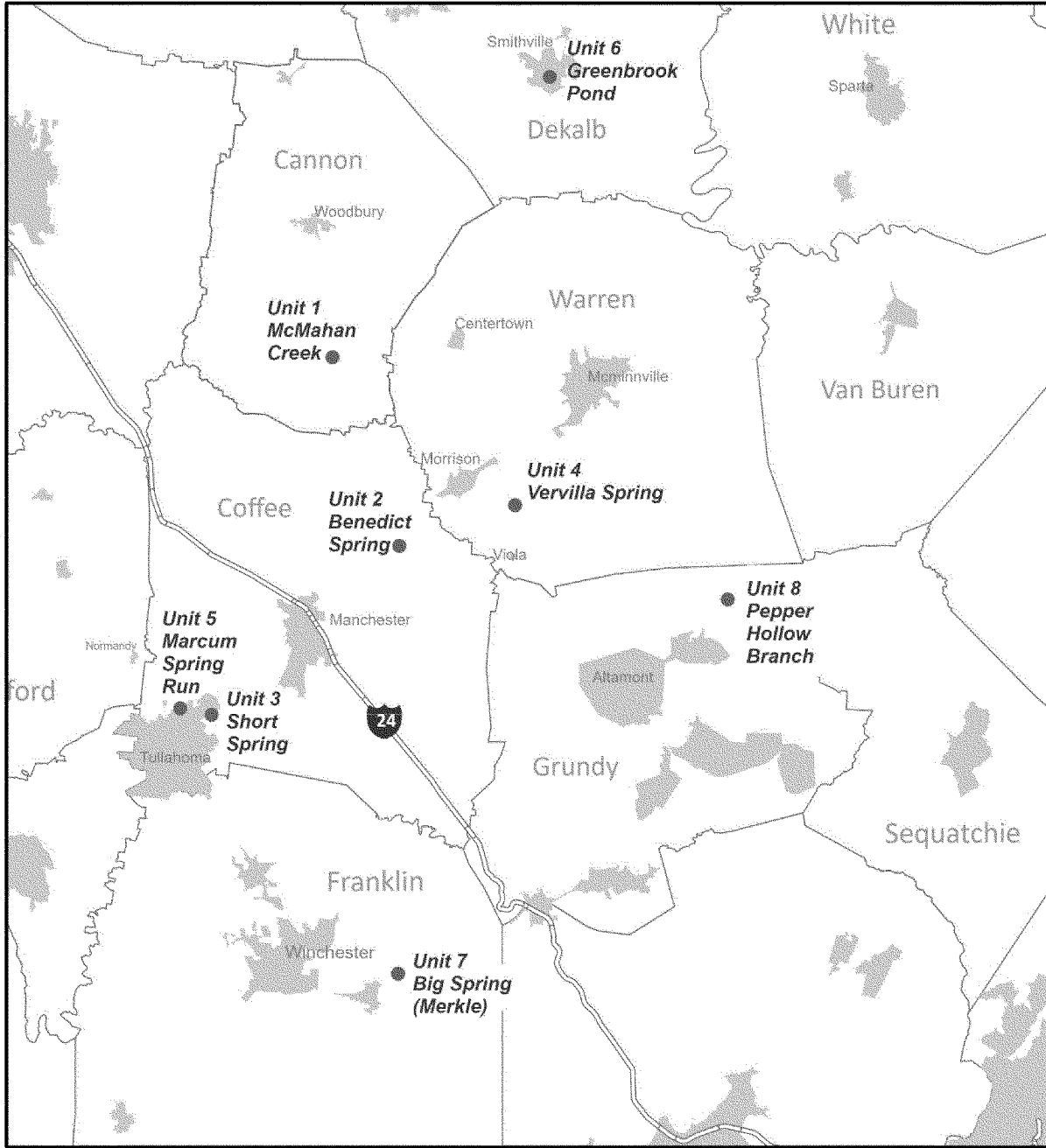
(4) Data layers defining map units were created using Universal Transverse Mercator (UTM) Zone 16N coordinates. The hydrologic data used in the maps were extracted from U.S. Geological Survey National Hydrography Dataset High Resolution (1:24,000 scale) using

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 <https://www.regulations.gov> under Docket No. FWS-R4-ES-2023-0224 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.

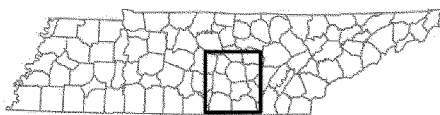
(5) *Note:* Index map follows: Figure 1 to Barrens Topminnow (*Fundulus julisia*) paragraph (5)

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Barrens Topminnow (*Fundulus julisia*) Critical Habitat Index Map

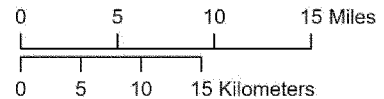


Map Location



● Critical Habitat

City Limits



(6) Unit 1: McMahan Creek; Cannon County, Tennessee.

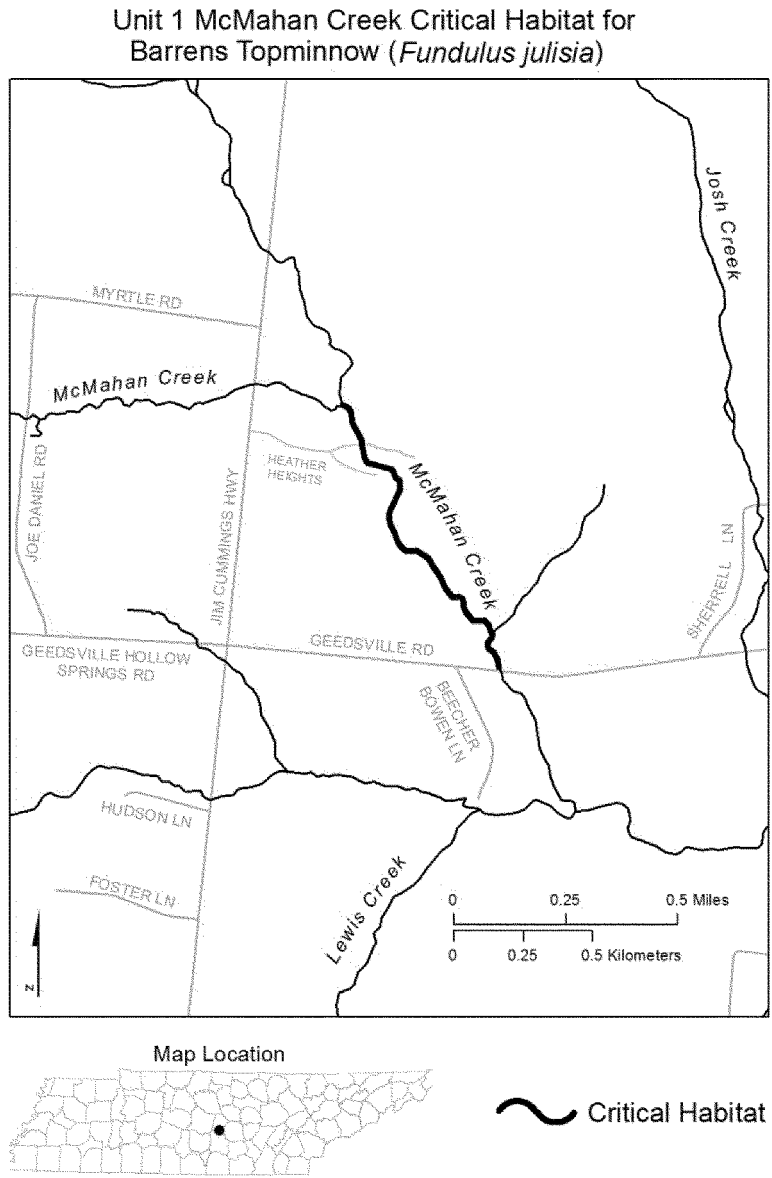
(i) Unit 1 consists of approximately 0.8 mile (mi) (1.3 kilometers (km)) of

McMahan Creek from the mouth of the unnamed perennial spring run upstream of the Woodland Estates subdivision (35.7157°, -86.0542°), down to the

bridge at Geedsville Road (35.7072°, -86.0480°), in Cannon County, Tennessee.

(ii) Map of Unit 1 follows:

Figure 2 to Barrens Topminnow
(Fundulus julisia) paragraph (6)(ii)



(7) Unit 2: Benedict Spring; Coffee
 County, Tennessee.

(i) Unit 2 consists of an approximately
 0.1-acre (ac) (0.04-hectare (ha)) pond fed

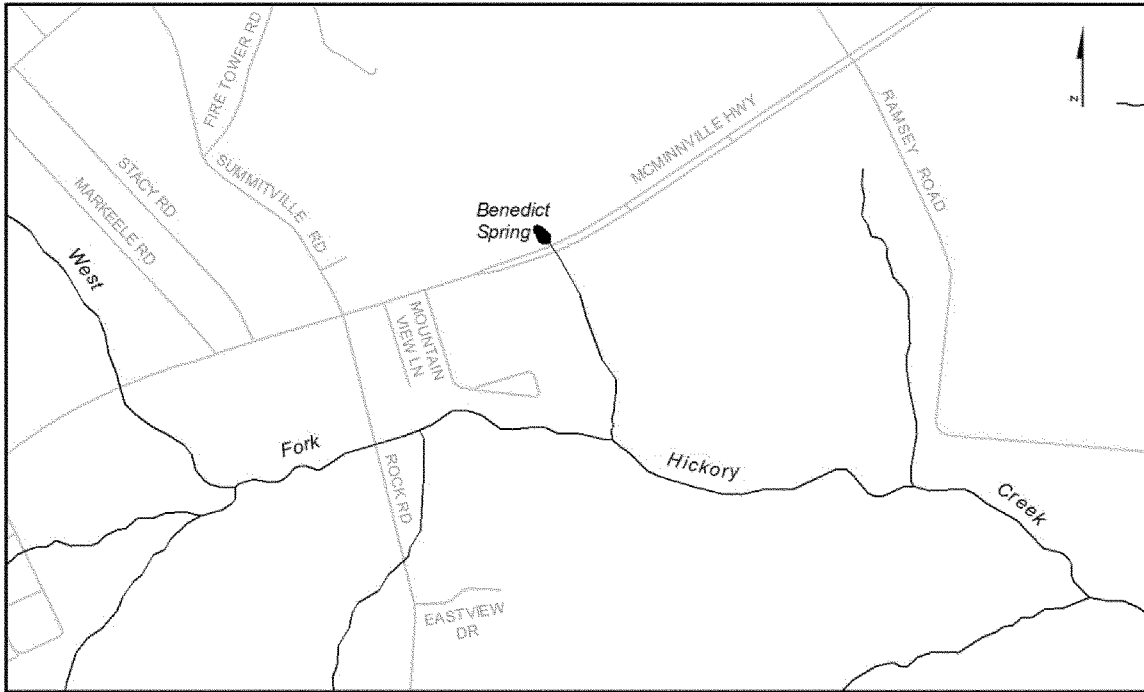
by a spring flowing out of a small cave,
 on a site (35.5497, -85.9836)
 approximately 0.2 mi (0.3 km) west-

southwest of the Summitville Post
 Office.

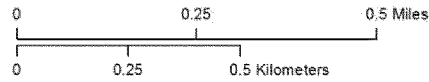
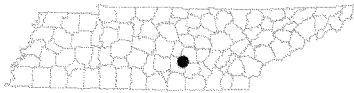
(ii) Map of Unit 2 follows:

Figure 3 to Barrens Topminnow (*Fundulus julisia*) paragraph (7)(ii)

Unit 2 Benedict Spring (Type Locality) Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



Map Location



(8) Unit 3: Short Spring; Coffee County, Tennessee.

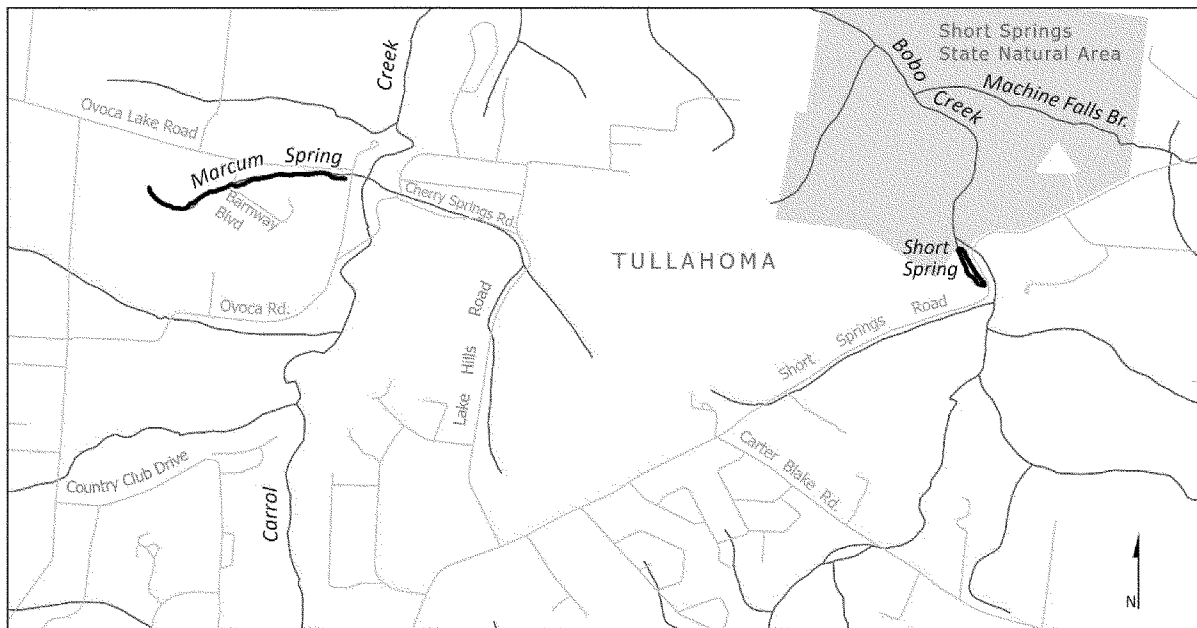
(i) Unit 3 consists of a 1.0-ac (0.4-ha) impounded spring (35.4045°,

– 86.1781°) in Tullahoma, in Coffee County, Tennessee.

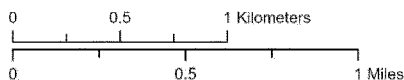
(ii) Map of Unit 3 and Unit 5 follows:

Figure 4 to Barrens Topminnow (*Fundulus julisia*) paragraph (8)(ii)

Critical Habitat for Barrens Topminnow (*Fundulus julisia*)
 Unit 3, Short Spring
 Unit 5, Marcum Spring



Map Location



 Critical Habitat

(9) Unit 4: Verville Spring; Warren County, Tennessee.

(i) Unit 4 is an approximately 0.2-mi (0.3-km) spring run located on an

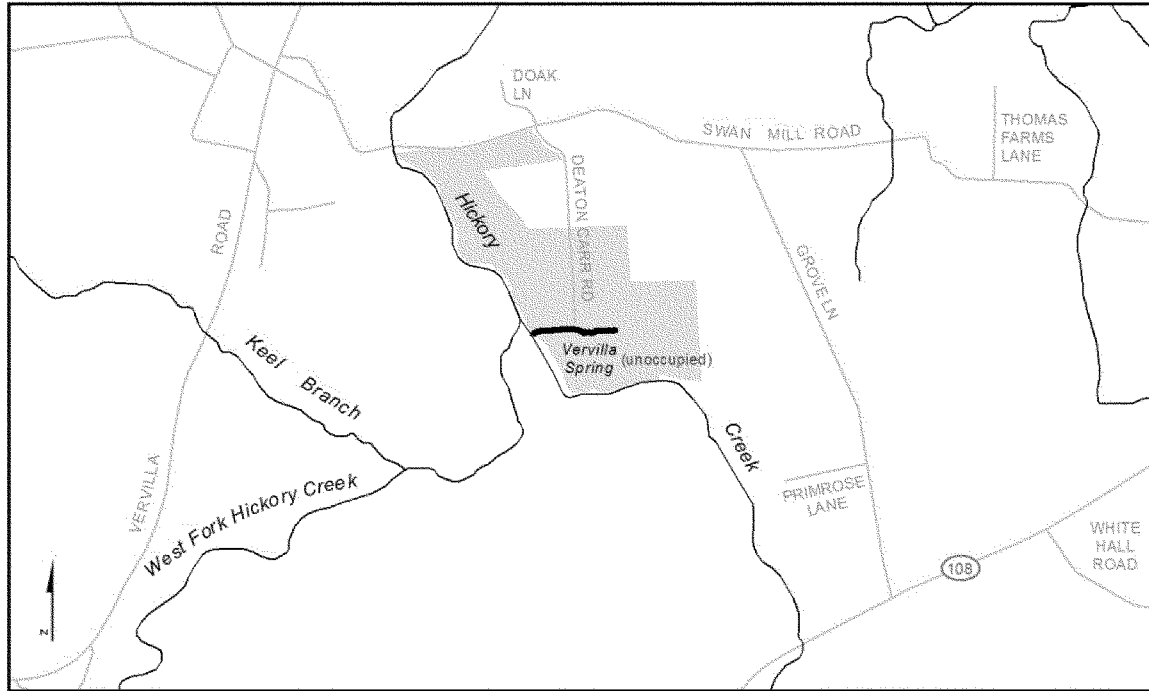
outparcel of the Tennessee National Wildlife Refuge, owned and managed by U.S. Fish and Wildlife Service, near the community of Verville. The unit

extends from the source of the spring run (35.5870°, -85.8575°) down to its mouth on Hickory Creek.

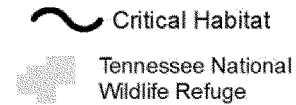
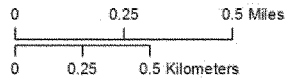
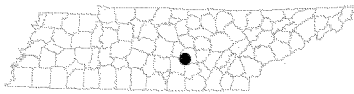
(ii) Map of Unit 4 follows:

Figure 5 to Barrens Topminnow
(Fundulus julisia) paragraph (9)(ii)

Unit 4 Vervilla Spring Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



Map Location



(10) Unit 5: Marcum Spring; Coffee County, Tennessee.

(i) Unit 5 is an approximately 0.6-mi (0.9-km) spring run, including adjacent disconnected spring pools, that flows into Ovoca Lake near Tullahoma, in Coffee County, Tennessee. Unit 5

(35.4090°, -86.2052°) runs from the source to the upper end of a pond just above the outlet into Ovoca Lake.

(ii) Map of Unit 5 is provided at paragraph (8)(ii) of this entry.

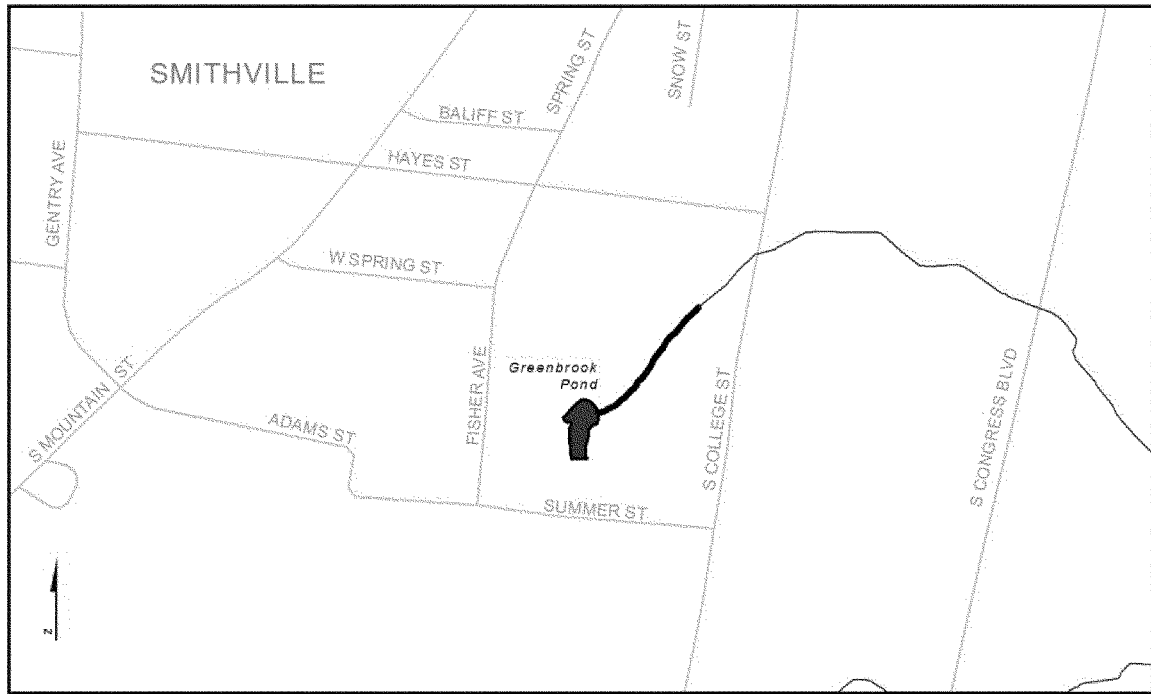
(11) Unit 6: Greenbrook Pond; Dekalb County, Tennessee.

(i) Unit 6 is an approximately 0.4-ac (0.16-ha) pond and 0.1-mi (0.16-km) spring run flowing from the pond, in Greenbrook Park, in the city of Smithville.

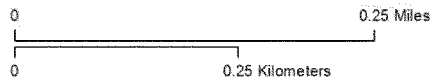
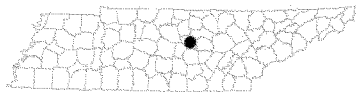
(ii) Map of Unit 6 follows:

Figure 6 to Barrens Topminnow
 (*Fundulus julisia*) paragraph (11)(ii)

Unit 6 Greenbrook Pond Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



Map Location



 Critical Habitat

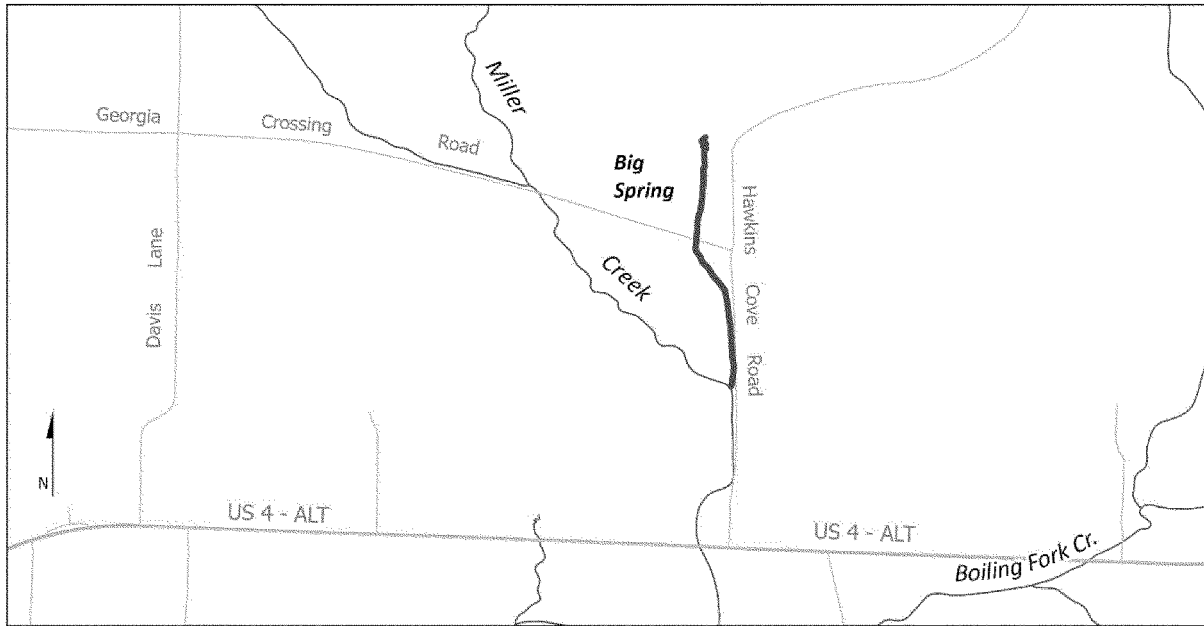
(12) Unit 7: Big Spring (Merkle); Franklin County, Tennessee.
 (i) Unit 7 consists of a springhead (35.1832°, -85.9831°) and

approximately 0.5-mi (0.85 km) of spring run between the springhead and the confluence with Miller Creek (35.1761°, -85.9822°).

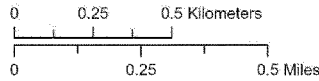
(ii) Map of Unit 7 follows:


Figure 7 to Barrens Topminnow (*Fondulus julisia*) paragraph (12)(ii)

Unit 7 Big Spring (Merkle) Critical Habitat for Barrens Topminnow (*Fundulus julisia*)



Map Location



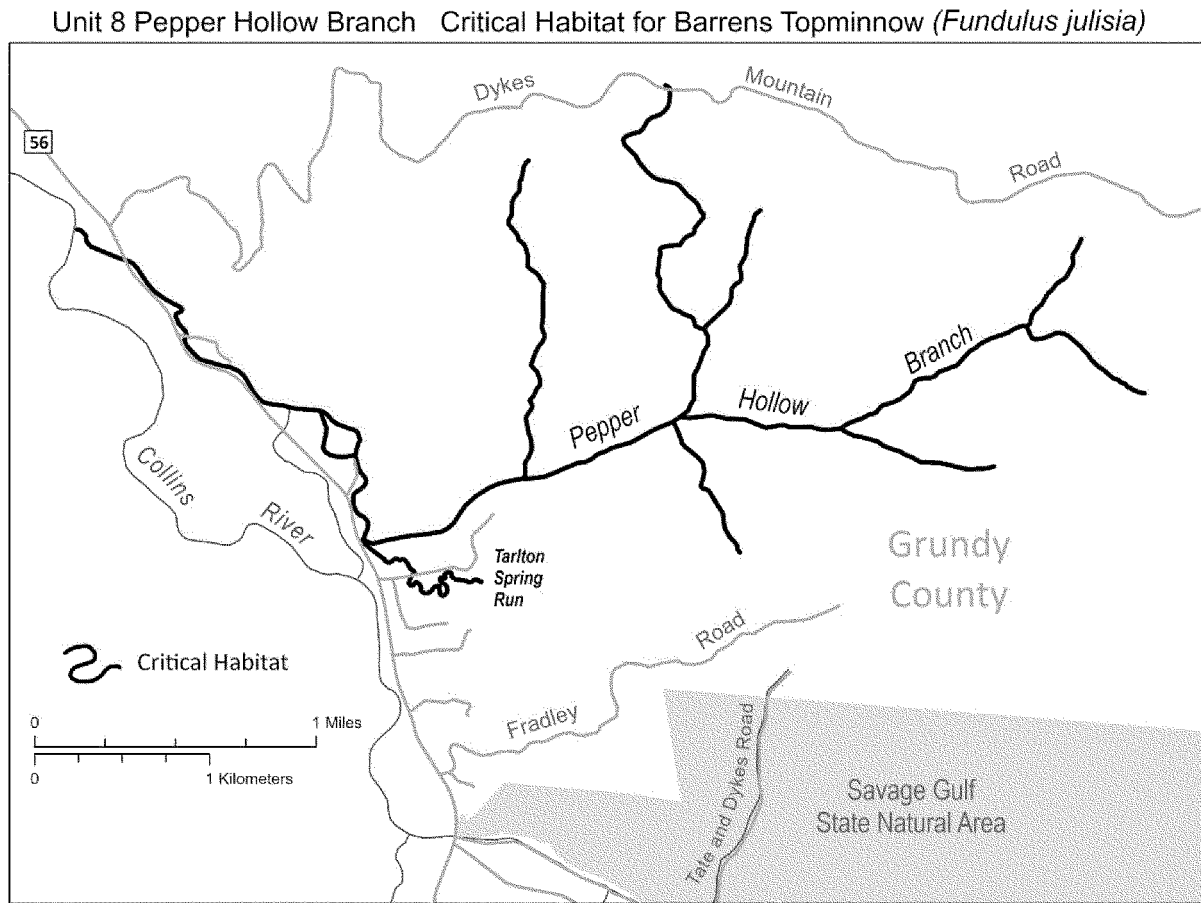
 Critical Habitat

(13) Unit 8: Pepper Hollow Branch; Grundy County, Tennessee.
 (i) Unit 8 consists of 9.2 mi (14.8 km) of Pepper Hollow Branch and its

permanent tributary reaches upstream of the confluence with the Collins River (35.5109°, -85.6686°), located just downstream of State Route 56.

(ii) Map of Unit 8 follows:

Figure 8 to Barrens Topminnow
(*Fundulus julisia*) paragraph (13)(ii)



* * * * *

Martha Williams,
Director, U.S. Fish and Wildlife Service.
[FR Doc. 2024-14320 Filed 7-8-24; 8:45 am]
BILLING CODE 4333-15-C