

reasons.⁴ In total, the 13 States and/or local air agencies that were issued an FFS can be found in Table 1 of Section II of the direct final action.

The EPA is taking direct final action with parallel proposal because we view the partial FFS withdrawals as administrative, noncontroversial, and anticipate no significant adverse comments. The EPA has identified the State and/or local air agency SIP provisions for which the partial FFS withdrawals are applicable to and explained our reasons for the withdrawal in the direct final action. At the same time, the EPA is proposing to make the same partial withdrawals. If no significant adverse comments are received on this proposed action, no further action will be taken on this proposal, and the direct final action will become effective as provided in that action. For further supplementary information and the rationale and consequences of this proposal, see the direct final action published in the Rules and Regulations section of this issue of the **Federal Register**.

III. Consequences of Withdrawn Portions of Findings of Failure To Submit and Remaining Air Agency Obligations

As further discussed in the direct final action, because certain SIP calls were vacated by the D.C. Circuit, the States and/or local air agencies with provisions to which those SIP calls previously applied no longer have an obligation to submit the revisions that the EPA had originally determined pursuant to the 2015 SSM SIP Call. As there is no longer a predicate submission obligation for those particular SIP-called provisions, the EPA's findings that such obligation were not met are no longer valid and must be withdrawn. The SIP provisions for which the EPA is proposing to withdraw the Agency's FFS can be found in Table 3 of Section III of the direct final action.

For those State and/or local jurisdiction SIP provisions listed in Table 3 of Section III of the direct final action for which the FFS are withdrawn, the CAA deadlines for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under CAA section 110(c) are no longer applicable. For those State and/or local jurisdiction SIP provisions in which the

FFS are not withdrawn and are still applicable, the CAA deadlines for the EPA to impose sanctions under CAA sections 179(a) and (b) and promulgate a FIP under section 110(c) remain in effect as previously established.⁵ The States and/or local air agencies for which the FFS are not withdrawn and mandatory CAA deadlines remain in effect can be found in Table 4 Section IV of the direct final action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders (E.O.) can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

For a complete discussion of the administrative requirements applicable to this action, see the direct final action published in the Rules and Regulations section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Approval and promulgation of implementation plans, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Joseph Goffman,

Assistant Administrator.

[FR Doc. 2024-27262 Filed 11-25-24; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2024-0132; FXES1111090FEDR-256-FF09E21000]

RIN 1018-BH72

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rusty Patched Bumble Bee

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 rusty patched bumble bee (*Bombus affinis*), a bumble bee historically known to occur broadly across the eastern United States and portions of Canada, under the

Endangered Species Act of 1973, as amended (Act). In total, we are proposing the designation of approximately 1,635,746 acres (661,963 hectares) of occupied critical habitat in 14 units across 33 counties in 6 States. We also announce the availability of an economic analysis of the proposed designation of critical habitat for the rusty patched bumble bee.

DATES: We will accept comments received or postmarked on or before January 27, 2025. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 10, 2025.

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-R3-ES-2024-0132, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment." Comments submitted electronically using the Federal eRulemaking Portal must be received by 11:59 p.m. eastern time on the closing date.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R3-ES-2024-0132, 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: Supporting materials, such as the species status assessment report, are available on the Service's website at <https://www.fws.gov/species/rusty-patched-bumble-bee-bombus-affinis> or at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0132. If we finalize the critical habitat designation, we will make the coordinates or plot points or both from which the maps are generated available at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0132 and on the Service's website at <https://www.fws.gov/species/rusty-patched-bumble-bee-bombus-affinis>.

⁴ See "West Virginia; Finding of Failure To Submit State Implementation Plan Revision in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction," 88 FR 23353 (April 17, 2023).

⁵ See 87 FR 1680, 1682.

⁶ See 88 FR 88 FR 23353, 23354-23355.

FOR FURTHER INFORMATION CONTACT:

Betsy Galbraith, Acting Field Supervisor, U.S. Fish and Wildlife Service, Minnesota-Wisconsin Ecological Services Field Office, 3815 American Blvd. East, Bloomington, MN 55425-1665; telephone 952-858-0793. 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-R3-ES-2024-0132 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:**Executive Summary**

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), when we determine that any species warrants listing as an endangered or threatened species, we are required to designate critical habitat, to the maximum extent prudent and determinable. Designations of critical habitat can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to designate critical habitat for the endangered rusty patched bumble bee.

The basis for our action. Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary), to the maximum extent prudent and determinable, to designate critical habitat concurrent with listing. 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 protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

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) Specific information on:

(a) The amount and distribution of rusty patched bumble bee habitat;

(b) Any additional areas occurring within the range of the species 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; and

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

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

(3) 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.

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

(5) 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. If you think we should exclude any areas, please provide information supporting a benefit of exclusion.

(6) Information on areas owned by the Department of Defense that overlap with the proposed designation.

(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 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 designation. 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 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, 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

Please refer to the proposed listing rule for the rusty patched bumble bee (81 FR 65324, September 22, 2016) for a detailed description of previous Federal actions concerning this species. On January 11, 2017, we published in the **Federal Register** (82 FR 3186) a final rule listing the rusty patched bumble bee as an endangered species. The rule became effective on March 21, 2017 (see 82 FR 10285, February 10, 2017). On September 1, 2020, we published a determination in the **Federal Register** (85 FR 54281) that designating critical habitat for the rusty patched bumble bee was not prudent.

On March 24, 2021, the Natural Resources Defense Council, Center for Biological Diversity, and Friends of Minnesota Scientific and Natural Areas filed a complaint challenging the Service's critical habitat prudency determination for the rusty patched bumble bee. On August 11, 2023, a court order vacated and remanded the Service's prudency determination. On February 8, 2024, the Service and plaintiffs reached a stipulated settlement agreement whereby the Service agreed to submit to the **Federal Register** either a proposed critical habitat rule or a determination that designation of critical habitat for the species is not prudent no later than November 20, 2024. This document addresses the court's opinion in compliance with the February 8, 2024, stipulated settlement agreement.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the rusty patched bumble bee. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited independent scientific review of the information contained in the rusty patched bumble bee SSA report. The SSA report underwent review by 15 scientists with expertise in bumble bee biology, habitat management, and stressors (factors negatively affecting the species). Results of this structured peer review process can be found in the docket for this proposed rule on <https://www.regulations.gov>. We incorporated the results of these reviews, as appropriate, into the SSA report (Service 2016, entire). Additionally, we will solicit peer review for this proposed critical habitat designation during this public comment period. These comments will be available along with other public comments in the docket for this proposed rule on <https://www.regulations.gov>.

Background

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

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

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

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

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

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 each Federal action agency 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 designated critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. 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 listed 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(b)(2) 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 compiled in 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 scientific data available at the time of designation will not control the direction and substance of future revised 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.

Species Needs

Overwintering

Little is known about the overwintering habitats of rusty patched bumble bee queens, but based primarily on observations of other species, we assume that rusty patched bumble bee queens overwinter in upland closed-canopy forest interior. Forest interiors are large blocks of unfragmented forest with continuous canopy that shows no detectable edge influences (Harper et al. 2005, p. 771). Most overwintering *Bombus* queens reported in the literature in North America were underground, and most were in shaded areas near trees and in banks without dense vegetation (Liczner and Colla 2019, p. 787). The only documented overwintering rusty patched bumble bee queen, discovered in a hemlock grove within a larger maple oak-forest (about 0.3 mile (mi) (0.5 kilometer (km)) into the forest) in Wisconsin in 2016, was found on a level area near the bottom of a north-facing slope under a few centimeters of leaf litter and loose soil (B. Herrick, University of Wisconsin-Madison Landscape Arboretum, 2016 and 2024, pers. comm.). Other species of the *Bombus* genus typically form a chamber in loose, soft soil, a few centimeters deep in bare earth, in moss, under tree litter, or in bare patches within short grass, and they may avoid areas with dense vegetation (Alford 1969, p. 156; Liczner and Colla 2019, p. 792). Overwintering habitat preferences may be species-specific and dependent on factors such as slope orientation and

timing of emergence. Most queens in England were found in well-drained soil that was shaded from direct sunlight in banks or under trees and was free from living ground vegetation (Alford 1969, pp. 150–152). For underground sites, soil type is often described as sandy and well-drained (Alford 1969, p. 169), which suggests that maintaining a consistently low moisture level is important (Sladen 1912, pp. 94–101). Because soil temperature influences diapause duration and emergence (Alford 1969, pp. 161–168; Beekman et al. 1998, p. 207), it has been hypothesized that the apparent preference for north-facing slopes and shaded areas is to prevent the overwintering queens from emerging too early on relatively warm days in the winter or early spring (Alford 1969, pp. 149–169), and more generally, it could suggest selection of sites that buffer hibernating bees from both temperature and moisture fluctuations (Williams et al. 2019, pp. 1–3).

Nesting

Rusty patched bumble bee nests are typically 1 to 4 feet underground in abandoned rodent nests, other mammal burrows, or other underground cavities with ample cover, and occasionally at the soil surface or in aboveground structures (Plath 1922 pp. 190–191, Macfarlane 1974, p. 5; Macfarlane 1994, pp. 5–6). Among the 43 rusty patched bumble bee nests studied in Ontario, 95 percent were underground (Macfarlane 1974, p. 5). Most recent rusty patched bumble bee nest observations were associated with rodent burrows (Boone et al. 2022, p. 381; Smith et al. in review), as were recently discovered nests of a closely related species, the western bumble bee (*B. occidentalis*) (Everett et al. in process, entire), which is in the same subgenus as rusty patched bumble bee. Three western bumble bee nests excavated in 2022 and 2023 in central Oregon were located in abandoned rodent burrows with soils classified as loamy sand, with an average of 84 percent sand particles (Everett et al. in process, entire). The transition zone between forest and grassland, as well as field boundaries, meadow margins, and forest edges, can be particularly valuable bumble bee nesting habitat due to the presence of abandoned rodent nests and undisturbed habitat with diverse floral resources (Hines and Hendrix 2005, p. 1483). Forest edge is the interface between forested and non-forested habitats that extends approximately 30 meters into the forest (Harper et al. 2005, pp. 771, 774).

Foraging

Bumble bees are generalist foragers that collect nectar and pollen from a wide diversity of plants (Xerces 2013, pp. 27–28). The rusty patched bumble bee is one of the first bumble bee species to emerge early in the spring and last to go into hibernation in the fall. To meet its nutritional needs, the species requires a constant and diverse supply of flowers that bloom throughout the colony's flight period from spring through the fall (MacFarlane et al. 1994, p. 5). The nectar from flowers provides carbohydrates and the pollen provides protein, fatty acids, and micronutrients for the species (Di Pasquale et al. 2013, p. 4; Lau et al. 2022, pp. 6–8). The number of new queens that a colony can produce is directly related to the amount of pollen that is available (Burns 2004, p. 150).

Based on other *Bombus* species, which typically exhibit foraging distances of less than 0.6 mi (1 km) from their nesting sites (Knight et al. 2005, p. 1816; Wolf and Moritz 2008, p. 422; Dramstad 1996, pp. 163–182; Osborne et al. 1999, pp. 524–526; Rao and Strange 2012, pp. 909–911), the rusty patched bumble bee may need floral resources in close proximity to its nest, although studies have not confirmed this to date. The rusty patched bumble bee may also be dependent on forest spring ephemeral flowers because of the species' early emergence in the spring and its association with forests and near forested habitats (Colla and Dumesh 2010, pp. 45–46, 48).

Readily available access to high-quality foraging habitats near nests allows other bumble bee species' workers to maintain short foraging distances (Crowther et al. 2019, p. 994). Detection probabilities of all bumble bee species, including rusty patched bumble bees, studied in Wisconsin by Nunes et al. (2024, p. 221), increased with floral abundance. Furthermore, colonies with low floral abundance around their nests may produce few workers, and males may fail to produce any new queens (Pelletier and McNeil 2003, pp. 691–692; Burns 2004, pp. 149, 155–156; Samuelson et al. 2018, pp. 57; Timberlake et al. 2021, p. 1013). Workers of other bumble bee species can forage 0.6 mi (1 km) or more from nests but may predominantly forage within a few hundred meters (Dramstad 1996, pp. 170–175; Osborne et al. 1999, pp. 524–526, 529; Wolf and Moritz 2008, p. 422; Rao and Strange 2012, p. 911). A paucity of spring floral resources contributed to high pathogen loads in one bumble bee species studied in Pennsylvania and may exacerbate the

threat posed by disease transmission from honeybee apiaries (McNeil et al. 2020, p. 3).

The availability of floral resources is dependent on the proper soil and precipitation conditions to sustain them. Extended periods of drought, for instance, may lessen the availability and diversity of flowering plants in a given area because plant phenology is primarily driven by temperature, precipitation, and the timing of snowmelt in the spring (Inouye and Wielgolaski 2003, p. 207; Wielgolaski and Inouye 2003, pp. 179–181; Pyke et al. 2016, p. 12).

Dispersal Habitat

Based on studies of a closely related species, the buff-tailed bumblebee (*Bombus terrestris*) (Kraus et al. 2009, p. 249; Lepais et al. 2010, pp. 826–827; Jha and Kremen 2013, p. 2492), the maximum dispersal distance of rusty patched bumble bee males and new queens is estimated to be up to 10 km to find mates in the autumn.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the rusty patched bumble bee from studies of the species' habitat, ecology, and life history as described above. Additional information can be found in the SSA report (Service 2016, entire; available on <https://www.regulations.gov> under Docket No. FWS-R3-ES-2015-0112-0245). We have determined that the following physical or biological features are essential to the conservation of the rusty patched bumble bee:

- (1) For overwintering, upland forest interior habitat containing leaf litter and without dense understory vegetation.
- (2) For nesting, upland forest edge interface between forested and non-forested natural habitats that extends approximately 30 meters into the forest.
- (3) For nesting, abandoned rodent burrows, other mammal burrows, existing cavities with ample cover, or similar existing cavities at the soil surface or below to 4 feet underground.
- (4) For nesting and overwintering, well-drained, loose soils sheltered from the elements.
- (5) For foraging, diverse, abundant, native floral resources for the entire active flight season.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain

features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (e.g., road and rail construction), habitat management (e.g., prescribed burns, herbicide use), forestry activities (e.g., timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (e.g., water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), actions that increase competition for floral resources (e.g., use of managed bees), and pesticide applications (e.g., rodenticides that may reduce rodents and therefore potential nesting areas). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses. The physical or biological features for the rusty patched bumble bee may require special management considerations or protection to address these threats.

Management activities that could ameliorate these threats include, but are not limited to: management techniques to enhance floral resources or reduce invasive plants or both, such as planting or seeding to increase the abundance and diversity of native wildflowers, removing and controlling invasive plants, using prescribed fire, and mowing; reduced or ceased use of rodenticides; use of best management practices for managed bees to reduce or eliminate competition for resources; and use of forestry best management practices to enhance early spring foraging resources (e.g., spring ephemerals, native flowering trees) and to reduce ground disturbance in forested areas during the overwintering season.

These management activities would protect the physical or biological features for the species by maintaining and increasing nectar and pollen resources, maintaining or increasing the availability of suitable nesting habitat and potential nesting sites (e.g., rodent burrows), and maintaining or increasing the availability of suitable overwintering habitat for the species.

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. In general, habitat is not limiting for the rusty patched bumble bees. However, there are no areas outside the areas identified as proposed critical habitat that would facilitate the recovery of the species. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the Act's definition of critical habitat. There are no unoccupied areas that are essential for the conservation of the rusty patched bumble bee. We identified no unoccupied areas that are free from potential interactions with managed bees or large-scale agricultural lands. There are many unoccupied areas that may contain suitable habitat for the rusty patched bumble bee; however, we did not identify any specific unoccupied areas that are essential for the conservation of the species. Areas that contain unoccupied suitable habitat can be considered in our recovery efforts with or without a critical habitat designation.

Sources of data for the rusty patched bumble bee and its habitat needs include research published in peer-reviewed articles on the species and related species, agency reports, communication with species experts, the 2021 rusty patched bumble bee recovery plan (Service 2021, entire), data submitted from 10(a)(1)(A) scientific recovery permit holders and public participation websites (e.g., <https://www.inaturalist.org/>), and the Service's published "High Potential Zones" and potential dispersal area data for rusty patched bumble bee (available from ArcGIS online at <https://www.arcgis.com/home/item.html?id=15b68d967aab4737981d172e8e25f78f>, accessed June 9, 2024).

After identifying areas that contain the physical or biological features essential to the conservation of the species, we then identified overlapping areas that likely have multiple colonies interacting with each other. A minimum of 50 verified rusty patched bumble bee observations since 2007 within estimated foraging and dispersal distances of one another likely represents multiple, interacting colonies existing over time, rather than single

observations of a single individual (most observations are of female workers; however, some are males or queens). Clustered, interacting colonies foster gene flow among them, thereby helping to facilitate genetic health. Maintaining gene flow among colonies is especially important in species like the rusty patched bumble bee because of genetic characteristics that can produce inviable or sterile males (that is, single locus complementary sex determination), which may lead to rapid extirpation, especially as colonies become small and isolated (Zayed and Packer 2005, p. 10744; Zayed 2009, entire).

We used the High Potential Zone (HPZ) model developed at the time of listing to determine areas with the highest potential for the species to be present and for which observation points were within likely foraging or dispersal distances from each other. This model uses ArcGIS software that considers the likelihood of rusty patched bumble bee movement based on the National Land Cover Database (NLCD, <https://www.usgs.gov/centers/eros/science/national-land-cover-database>). This model assesses the likelihood of rusty patched bumble bee distribution from the locations of known records based on the manner in which various land cover types may affect bumble bee movement and behavior. Land cover types are grouped as having strong, moderate, weak, or no limits on the species' movement based on the best available information for this species or similar bumble bee species. This methodology was based on a similar model created to examine movement of the yellow-faced bumble bee (*Bombus vosnesenskii*) (Jha and Kremen 2013, entire). The polygons generated from the HPZ model suggest areas with the highest potential for the species to be present, based on typical bumble bee foraging distances, estimated dispersal distances, and the ability of bumble bees to move through various land cover types, but the model does not attempt to identify or quantify suitable habitat for the species (for more details, see <https://www.fws.gov/media/high-potential-zone-model-rusty-patched-bumble-bee>).

After identifying areas that likely have multiple interacting colonies and are within a contiguous HPZ, we then identified areas that are genetically distinct. Analyses of rangewide genetic data collected from extant records show that rusty patched bumble bees in the Appalachian region of West Virginia and Virginia represent a genetically distinct population cluster with substantial differentiation from the rest of the extant range (Mola et al. 2024, p. 8).

Finally, we included areas free from the impacts of pesticides and managed bees. Prior to its listing as endangered in 2017, the species experienced a widespread and steep decline. The exact cause of the decline is unknown, but evidence suggests a synergistic interaction between an introduced pathogen and exposure to pesticides (specifically, insecticides and fungicides; Service 2016, p. 53). Pathogens can be introduced to rusty patched bumble bees through managed bees. Generally, the term “managed bees” is defined as hives or colonies of bees that are used commercially to provide pollination services for a wide variety of crops over the growing season, with some hives or colonies moved within and among States multiple times throughout any one growing season. We, therefore, include only areas that are at least 0.6 mi (1 km) away from large-scale and intensive agricultural areas that rely on pesticides, or use a variety of managed bees for pollination, or both. This distance is used to buffer areas from the potential impacts of managed bees and pesticides that may be used in large-scale agriculture.

In summary, for areas within the geographical area occupied by the species at the time of listing, we

delineated critical habitat unit boundaries using the following criteria:

- (1) Areas within a contiguous high potential zone (HPZ) with 50 or more positive observations since 2007.
- (2) Areas that include any known genetically distinct populations.
- (3) Areas that are at least 0.6 mi (1 km) away from large-scale agriculture that use pesticides, managed bees, or both.

This proposed critical habitat overlaps a great deal of developed areas, such as lands covered by buildings, pavement, and other structures. These structures are not designated as critical habitat themselves because such structures lack the physical or biological features necessary for the rusty patched bumble bee. However, the physical or biological features for rusty patched bumble are interspersed throughout the developed lands at such a scale that they cannot be mapped. 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 structures. Any such structures 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 such structures 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 surrounding 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.

Proposed Critical Habitat Designation

We are proposing 14 units as critical habitat for the rusty patched bumble bee. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the rusty patched bumble bee. The 14 areas we propose as critical habitat are: (1) Minneapolis-St. Paul Metropolitan; (2) Northfield; (3) Rochester; (4) Winona; (5) Denzer; (6) Bunker Hill; (7) Madison; (8) Milwaukee; (9) Rockford; (10) McHenry; (11) Elgin; (12) Lost Nation; (13) Iowa City; and (14) Black Creek Mountain. Table 1 shows the proposed critical habitat units and the approximate area of each unit; all units are considered occupied.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE RUSTY PATCHED BUMBLE BEE
 [Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	State(s)
1. Minneapolis-St. Paul Metropolitan	Private	499,204 (202,021)	Minnesota.
	Federal	5,741 (2,323)	
	State/local/school	59,769 (24,188)	
	Tribal	3,091 (1,251)	
	Total	567,805 (229,782)	
2. Northfield	Private	12,056 (4,879)	Minnesota.
	Federal	0	
	State/local/school	501 (203)	
	Tribal	0	
	Total	12,557 (5,082)	
3. Rochester	Private	41,819 (16,924)	Minnesota.
	Federal	0	
	State/local/school	1,271 (515)	
	Tribal	0	
	Total	43,091 (17,438)	
4. Winona	Private	29,340 (11,873)	Minnesota.
	Federal	0	
	State/local/school	483 (195)	
	Tribal	0	
	Total	29,823 (12,069)	

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE RUSTY PATCHED BUMBLE BEE—Continued
 [Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	State(s)
5. Denzer	Private	26,471 (10,712)	Wisconsin.
	Federal	0	
	State/local/school	538 (218)	
	Tribal	0	
	Total	27,009 (10,930)	
6. Bunker Hill	Private	13,559 (5,487)	Wisconsin.
	Federal	0	
	State/local/school	5,126 (2,075)	
	Tribal	0	
	Total	18,686 (7,562)	
7. Madison	Private	195,952 (79,299)	Wisconsin.
	Federal	515 (208)	
	State/local/school	14,283 (5,780)	
	Tribal	4 (2)	
	Total	210,753 (85,289)	
8. Milwaukee	Private	232,722 (94,179)	Wisconsin.
	Federal	131 (53)	
	State/local/school	20,130 (8,146)	
	Tribal	10 (4)	
	Total	252,992 (102,382)	
9. Rockford	Private	136,826 (55,371)	Illinois.
	Federal	0	
	State/local/school	13,283 (5,375)	
	Tribal	0	
	Total	150,108 (60,747)	
10. McHenry	Private	59,158 (23,940)	Illinois and Wisconsin.
	Federal	2 (1)	
	State/local/school	9,135 (3,697)	
	Tribal	0	
	Total	68,295 (27,638)	
11. Elgin	Private	56,318 (22,791)	Illinois.
	Federal	0	
	State/local/school	18,762 (7,593)	
	Tribal	0	
	Total	75,080 (30,384)	
12. Lost Nation	Private	14,416 (5,834)	Illinois.
	Federal	0	
	State/local/school	627 (254)	
	Tribal	0	
	Total	15,043 (6,088)	
13. Iowa City	Private	30,397 (12,301)	Iowa.
	Federal	11,362 (4,598)	
	State/local/school	4,144 (1,677)	
	Tribal	0	
	Total	45,902 (18,576)	
14. Black Creek Mountain	Private	11,200 (4,532)	Virginia and West Virginia.
	Federal	105,558 (42,718)	
	State/local/school	1,845 (747)	
	Tribal	0	
	Total	118,603 (47,997)	

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE RUSTY PATCHED BUMBLE BEE—Continued

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	State(s)
Totals	Private	1,359,437 (550,145)	
	Federal	123,307 (49,901)	
	State/local/school	149,897 (60,661)	
	Tribal	3,105 (1,257)	
	Total	1,635,746 (661,963)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the rusty patched bumble bee, below.

Unit 1: Minneapolis-St. Paul Metropolitan

Unit 1 consists of 567,805 ac (229,782 ha) in the Minneapolis-St. Paul metropolitan area of Minnesota in Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, and St. Croix Counties. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (499,204 ac (202,021 ha)), local government-owned lands (40,596 ac (16,429 ha)), Minnesota State lands (11,983 ac (4,849 ha)), university or school lands (7,190 ac (2,910 ha)), Tribal lands (3,091 ac (1,251 ha)), and Federal lands (5,741 ac (2,323 ha)). The Federal lands include the National Park Service's Mississippi National River and Recreational Area and Lower St. Croix National Scenic Riverway, and the Service's Minnesota Valley National Wildlife Refuge. Approximately 212 ac (86 ha) of privately owned lands are managed by the U.S. Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) Wetlands Reserve Program. Tribal lands include Shakopee Mdewakanton Sioux Community and Shakopee Mdewakanton Sioux Community Off-Reservation Land Trust.

Special management considerations or protection may be required within Unit 1 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (e.g., road and rail construction), habitat management (e.g., prescribed burns, herbicide use), forestry activities (e.g., timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (e.g., water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (e.g., rodenticides

that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 2: Northfield

Unit 2 consists of 12,557 ac (5,082 ha) in the Northfield, Minnesota, metropolitan area in Dakota and Rice Counties. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (12,056 ac (4,879 ha)), local government-owned lands (489 ac (198 ha)), and Minnesota State lands (12 ac (5 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 2 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (e.g., road and rail construction), habitat management (e.g., prescribed burns, herbicide use), forestry activities (e.g., timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (e.g., water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (e.g., rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 3: Rochester

Unit 3 consists of 43,091 ac (17,438 ha) in the Rochester, Minnesota, metropolitan area in Olmsted County. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (41,819 ac (16,924 ha)), local government-owned lands (939 ac (380 ha)), and Minnesota State lands (332 ac

(134 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 3 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (e.g., road and rail construction), habitat management (e.g., prescribed burns, herbicide use), forestry activities (e.g., timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (e.g., water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (e.g., rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 4: Winona

Unit 4 consists of 29,823 ac (12,069 ha) in the Winona, Minnesota, area in Winona County. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (29,340 ac (11,873 ha)), local government-owned lands (423 ac (171 ha)), and Minnesota State lands (60 ac (24 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 4 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (e.g., road and rail construction), habitat management (e.g., prescribed burns, herbicide use), forestry activities (e.g., timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (e.g., water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (e.g., rodenticides

that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 5: Denzer

Unit 5 consists of 27,009 ac (10,930 ha) in Sauk County near Denzer, Wisconsin. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (26,471 ac (10,712 ha)), including 2,345 ac (949 ha) owned by nongovernmental organizations (NGOs), and Wisconsin State lands (538 ac (218 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 5 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 6: Bunker Hill

Unit 6 consists of 18,686 ac (7,562 ha) in Iowa County near Bunker Hill, Wisconsin. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (13,559 ac (5,487 ha)) and Wisconsin State lands (5,126 ac (2,075 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 6 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and

pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 7: Madison

Unit 7 consists of 210,753 ac (85,289 ha) in Dane and Iowa Counties near Madison, Wisconsin. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (195,952 ac (79,299 ha)), local government-owned lands (8,679 ac (3,512 ha)), university or school lands (1,086 ac (440 ha)), Wisconsin State lands (4,518 ac (1,828 ha)), Tribal lands (4 ac (2 ha)), and Federal lands (515 ac (208 ha)). The Federal lands include the U.S. Forest Service's Forest Products Experimental Laboratory, National Park Service's Ice Age National Scenic Trail, and the Service's Dane County Waterfowl Production Area. Approximately 304 ac (123 ha) of private lands in this unit are managed by the USDA-NRCS Wetlands Reserve Program, and approximately 53 ac (21 ha) are managed by the USDA-NRCS Emergency Waters Protection Program. The Tribal lands are managed by the Ho-Chunk Nation.

Special management considerations or protection may be required within Unit 7 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 8: Milwaukee

Unit 8 consists of 252,992 acres (102,382 hectares) in the Milwaukee, Wisconsin, metropolitan area in Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (232,722 ac (94,179 ha)), local

government-owned lands (17,995 ac (7,282 ha)), Wisconsin State lands (2,121 ac (858 ha)), university or school lands (14 ac (6 ha)), Tribal lands (10 ac (4 ha)), and Federal lands (131 ac (53 ha)). The Federal lands in this unit are owned by the Bureau of Land Management (5 ac (2 ha)) and the Department of Defense (126 ac (51 ha)). Approximately 66 ac (27 ha) of private lands in this unit are managed by the USDA-NRCS Wetlands Reserve Program. Tribal lands are in the Forest County Potawatomi Off-Reservation Land Trust.

Special management considerations or protection may be required within Unit 8 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 9: Rockford

Unit 9 consists of 150,108 ac (60,747 ha) in Boone, Ogle, and Winnebago Counties near Rockford, Illinois. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (136,826 ac (55,371 ha)), local government-owned lands (7,898 ac (3,196 ha)), university or school lands (2,395 ac (969 ha)), and Illinois State lands (2,990 ac (1,210 ha)). There are no Federal or Tribal lands identified in this unit. Approximately 669 ac (271 ha) of private lands in this unit are managed by the USDA-NRCS Wetlands Reserve Program.

Special management considerations or protection may be required within Unit 9 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*,

water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 10: McHenry

Unit 10 consists of 68,295 ac (27,638 ha) near McHenry, Illinois, in McHenry and Lake Counties, Illinois, and Kenosha County, Wisconsin. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (59,158 ac (23,940 ha)), local government-owned lands (1,406 ac (569 ha)), Illinois State lands (5,445 ac (2,204 ha)), university or school lands (2,284 ac (924 ha)), and Federal lands (2 ac (1 ha)). The Federal lands are owned by the Bureau of Land Management. Thirty-nine ac (16 ha) of a conservation easement within the Hackmatack National Wildlife Refuge, managed by the Service, falls within this unit. Approximately 412 ac (167 ha) of private lands within this unit are managed by the USDA–NRCS Wetlands Reserve Program. There are no Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 10 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 11: Elgin

Unit 11 consists of 75,080 ac (30,384 ha) in Cook, Kane, Lake, and McHenry Counties near Elgin, Illinois. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (56,318 ac (22,791 ha)), local government-owned lands (13,710 ac (5,548 ha)), university or school lands

(4,884 ac (1,977 ha)), and Illinois State lands (168 ac (68 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 11 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 12: Lost Nation

Unit 12 consists of 15,043 ac (6,088 ha) in Lee and Ogle Counties near Lost Nation, Illinois. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (14,416 ac (5,834 ha)), including 2,189 ac (886 ha) owned by NGOs, and Illinois State lands (627 ac (254 ha)). There are no Federal or Tribal lands identified in this unit.

Special management considerations or protection may be required within Unit 12 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 13: Iowa City

Unit 13 consists of 45,902 ac (18,576 ha) in Johnson County near Iowa City, Iowa. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private

lands (30,397 ac (12,301 ha)), Iowa State lands (2,287 ac (926 ha)), local government-owned lands (1,857 ac (751 ha)), and Federal lands (11,362 ac (4,598 ha)). The Federal lands include the U.S. Army Corps of Engineers' Coralville Lake and Coralville Reservoir. A portion of the U.S. Army Corps of Engineers' land is managed by the State of Illinois (1,333 ac (539 ha)) and the University of Iowa (421 ac (170 ha)).

Special management considerations or protection may be required within Unit 13 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty patched bumble bee). Sources of these stressors include, but are not limited to, agricultural, municipal, and residential land uses.

Unit 14: Black Creek Mountain

Unit 14 consists of 118,603 ac (47,997 ha) near Black Creek Mountain in Highland and Bath Counties, Virginia, and Greenbrier and Pocahontas Counties, West Virginia. The unit is occupied and contains all of the essential physical or biological features. This unit consists of private lands (11,200 ac (4,532 ha)), Virginia State lands (1,845 ac (747 ha)), and Federal lands (105,558 ac (42,718 ha)). The Federal lands include the Monongahela and George Washington–Jefferson National Forests.

Special management considerations or protection may be required within Unit 14 to alleviate impacts from stressors that are anticipated to degrade the physical or biological features, including, but not limited to, ground disturbance or compaction activities (*e.g.*, road and rail construction), habitat management (*e.g.*, prescribed burns, herbicide use), forestry activities (*e.g.*, timber harvest), actions that cause an increase in the extent or duration of surface flooding or soil saturation (*e.g.*, water impoundments, alteration or interruption of existing drainage patterns, surface runoff alterations), and pesticide applications (*e.g.*, rodenticides that may reduce rodents and therefore potential nesting areas for the rusty

patched bumble bee). Sources of these stressors include, but are not limited to, forestry, recreational, municipal, and residential land uses.

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 authorize, fund, 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) 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 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 the 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** documents “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 rusty patched bumble bee include those that may affect the essential physical or biological features of the rusty patched

bumble bee’s critical habitat (see Physical or Biological Features Essential to the Conservation of the Species, above).

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.

An INRMP that does not include the rusty patched bumble was completed by the 88th Readiness Division (RD) of the Army Reserve in 2017. As currently written, the 2017 INRMP does not provide a benefit to the rusty patched bumble bee. The 88th RD is in the process of updating its INRMP to incorporate the rusty patched bumble bee and its habitat. After we receive the updated INRMP, we will assess its conservation benefit to the rusty patched bumble bee under 50 CFR 424.12(h) before the final critical habitat designation. Based on the considerations outlined in 50 CFR 424.12(h), and in accordance with section 4(a)(3)(B)(i) of the Act, if we determine that conservation efforts identified in the INRMP will provide a benefit to the rusty patched bumble bee, we will exempt lands within this installation from critical habitat designation under section 4(a)(3) of the Act; approximately 47 ac (19 ha) of Unit 1 (Minneapolis-St. Paul Metropolitan), 127 ac (51 ha) of Unit 8 (Milwaukee), and 15 ac (6 ha) of Unit 9 (Rockford) of 88th RD land would be exempted from the final 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 any area from critical habitat if the benefits of exclusion outweigh those of inclusion, so long as exclusion will not result in extinction of the species concerned.

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 section 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. To determine whether the designation of critical habitat may have an economic effect of \$200 million or more in any given year (which would trigger section 3(f) of E.O. 12866, as amended by E.O. 14094), we used a screening analysis to assess whether a designation of critical habitat for the rusty patched bumble bee is likely to exceed this 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 rusty patched bumble bee (Industrial

Economics, Inc. (IEc) 2024, 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 economic analysis of the proposed critical habitat designation for the rusty patched bumble bee and 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 rusty patched bumble bee, first we identified, in the IEM dated June 2024, probable incremental economic impacts associated with the following categories of activities: (1) bridge replacements; (2) spotted lanternfly

control; (3) spill response; (4) Federal grants; (5) navigation channel improvements; (6) recreation construction; (7) forest management; (8) insect pest monitoring; (9) prescribed burns; (10) tree removal and harvest; (11) water supply facility maintenance; (12) road maintenance and construction; (13) scientific monitoring and research; and (14) habitat management. 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 affects activities conducted, funded, permitted, or authorized by Federal agencies only. In areas where the rusty patched bumble bee is present, Federal agencies are required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, 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 would result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the rusty patched bumble bee's critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would 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 of critical habitat.

The proposed critical habitat designation for the rusty patched bumble bee consists of approximately 1,635,746 acres (661,963 hectares) of occupied habitat in 14 units. Ownership

of lands within the proposed critical habitat units is approximately 83 percent private; 9 percent State, local government, university, or school; 8 percent Federal; and less than 1 percent in Tribal ownership. All proposed units are occupied by the species.

Consultation to determine if projects would jeopardize the species would be required regardless of the critical habitat designation. Additionally, the activities that may require section 7 consultation are not different with or without critical habitat. As a result, designating critical habitat is not expected to result in additional consultations beyond those required due to the presence of the species.

For future consultations in the proposed critical habitat area, we anticipate that the same kinds of conservation recommendations made to avoid jeopardy would also avoid adverse modification of critical habitat. Conservation measures to protect rusty patched bumble bee habitat would be the same with and without a critical habitat designation. We do not expect a critical habitat designation to result in recommendations for new, changed, or lengthened seasonal restrictions for rusty patched bumble bees. Thus, the outcome of these consultations is unlikely to be different with or without the designation of critical habitat.

At the time of this proposal, 29 co-occurring species listed under the Act occur within the rusty patched bumble bee's proposed critical habitat. Conservation efforts for other listed species or existing critical habitat designations are likely to provide conservation benefits to the rusty patched bumble bee under the baseline (*i.e.*, even absent designation of new critical habitat for this species). Additionally, there are multiple overlapping conservation requirements for some of the listed species.

For these reasons, incremental effects of the critical habitat designation on the costs of future section 7 consultations are likely to be limited to the additional administrative effort to evaluate the potential for adverse modification of rusty patched bumble bee critical habitat (IEc 2024, p. 10). The breakdown of the anticipated annual cost of section 7 consultations for the proposed designation is approximately \$11,000 for programmatic consultations, \$90,000 for formal consultations, \$250,000 for informal consultations, and \$31,000 for technical assistance. Therefore, the incremental costs of designating critical habitat for the rusty patched bumble bee are likely to be on the order of \$390,000 (2024 dollars) in a given year (IEc 2024, p. 15). In conclusion, the rule is

unlikely have an economic effect of \$200 million or more in any given year and, therefore, is unlikely meet the threshold in section 3(f)(1) of E.O. 12866, as amended by E.O. 14094 (IEc 2024, p. 18).

We are soliciting data and comments from the public on the economic analysis discussed above. During the development of a final designation, we will consider the information presented in the economic analysis 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 the 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) of the Act, 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) of the Act requires us to consider those impacts whenever we designate critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information,

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

We are aware of a number of small parcels of land that are owned or leased by the DoD that overlap with this proposed designation. During the development of this proposed rule, we have initiated coordination efforts with the DoD agency that owns each parcel, and we will continue to work with those DoD agencies that may be affected by this designation as we develop any final rule. These parcels are generally small and highly dispersed throughout the proposed critical habitat designation.

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 approved and permitted conservation agreements or plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with

assurances (CCAAs), “conservation benefit agreements” or “conservation agreements” (“CBAs”) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (see 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.

Tribal Lands

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

A joint Secretary’s Order (S.O.) that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretary’s Order 3206, “American Indian Tribal Rights, Federal–Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(B)(4) of the appendix requires the Service to consult with affected Tribes when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally-owned fee lands, or the exercise of Tribal rights. That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to “evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.”

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

However, S.O. 3206 does not override the Act’s statutory requirement of designation of critical habitat. As stated above, we must consult with any Tribe when a designation of critical habitat may affect Tribal lands or resources. The Act requires us to identify areas that meet the definition of “critical habitat” (*i.e.*, areas occupied at the time of listing that contain the essential physical or biological features that may require special management considerations or protection and unoccupied areas that are essential to the conservation of a species), without regard to land ownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries’ statutory authority under the Act or other statutes.

The proposed critical habitat designation includes portions of the following Tribal lands or resources, as noted above in table 1 and the unit descriptions: Shakopee Mdewakanton Sioux Community and Shakopee Mdewakanton Sioux Community Off-Reservation Land Trust (proposed Unit 1), Ho-Chunk Nation (proposed Unit 7), and Forest County Potawatomi Off-Reservation Land Trust (proposed Unit 8).

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

In preparing this proposal, we have determined that no HCPs or other management plans for the rusty patched bumble bee currently exist. We have determined that there are lands within the proposed designation of critical habitat for rusty patched bumble bee owned or managed by the DoD, and we have reached out to the DoD to evaluate if there is a need to exclude these lands from the designation based on national security. In addition, the proposed critical habitat designation includes Tribal lands or resources that we may consider for exclusion, in keeping with S.O. 3206.

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 the 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.

Required Determinations

Clarity of the Rule

We are required by E.O.s 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 14904)

Executive Order 14094 amends and 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 and 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. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for

public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; title II of Pub. L. 104–121, March 29, 1996), 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, the proposed 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, the proposed 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 (66 FR 28355, May 22, 2001). 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, such as E.O. 14094 (88 FR 21879, April 11, 2023)); 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 no statement of energy effects is required.

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

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

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

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions 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 rule would significantly or uniquely affect small governments. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the rusty patched bumble bee in a takings implications assessment. The Act does not authorize the Services 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 rusty patched bumble bee, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with

Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal Government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

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

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed

rule provides several options for the interested public to obtain more detailed location information, if desired.

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

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

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

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, May 4, 1994), 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 federally recognized Tribes and Alaska Native Corporations (ANCs) 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. During the development of this proposed rule, we approached the Tribes whose lands overlapped with the range of the rusty patched bumble bee in an effort to coordinate with them on the proposed critical habitat designation. We received interest from the Prairie Island Indian Community in working with us on rusty patched bumble bee conservation (unrelated to this proposed designation). The proposed critical habitat does not overlap with Prairie Island Indian Community lands, but we will continue to coordinate with the Tribe in recovery efforts for the species. We will continue to work with all interested Tribal entities during the development of a final rule for the designation of critical habitat for the rusty patched bumble bee.

References Cited

A complete list of references cited in this rulemaking is available on the

internet at <https://www.regulations.gov> and upon request from the Minnesota-Wisconsin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by revising the entry for “Bee, bumble, rusty patched” under INSECTS to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Insects				
*	*	*	*	*
Bee, bumble, rusty patched	<i>Bombus affinis</i>	Wherever found	E	82 FR 3186, 1/11/2017; 50 CFR 17.95(i). ^{CH}
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (i) by adding an entry for “Rusty Patched Bumble Bee (*Bombus affinis*)” before the entry for “Casey’s June Beetle (*Dinacoma caseyi*)” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) *Insects.*

Rusty Patched Bumble Bee (*Bombus affinis*)

(1) Critical habitat units are depicted for Boone, Cook, Kane, Lake, Lee, McHenry, Ogle, and Winnebago Counties, Illinois; Johnson County,

Iowa; Carver, Dakota, Hennepin, Olmsted, Pierce, Ramsey, Rice, Scott, St. Croix, Washington, and Winona Counties, Minnesota; Bath and Highland Counties, Virginia; Greenbrier and Pocahontas Counties, West Virginia; and Dane, Iowa, Kenosha, Milwaukee, Ozaukee, Racine, Sauk, Washington,

and Waukesha Counties, Wisconsin, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the rusty patched bumble bee consist of the following components:

(i) For overwintering, upland forest interior habitat containing leaf litter and without dense understory vegetation.

(ii) For nesting, upland forest edge interface between forested and non-forested natural habitats that extends approximately 30 meters into the forest.

(iii) For nesting, abandoned rodent burrows, other mammal burrows, existing cavities with ample cover, or similar existing cavities at the soil surface or below to 4 feet underground.

(iv) For nesting and overwintering, well-drained, loose soils sheltered from the elements.

(v) For foraging, diverse, abundant, native floral resources for the entire active flight season.

(3) Critical habitat does not include human-made 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 the data from the Service's modeled High Potential Zones and potential dispersal areas for rusty patched bumble bee. The projection used in mapping and calculating distances and locations within the units was EPSG code 4269—North American Datum 1983 (NAD83), which is a geographic coordinate system used for mapping locations in North America.

The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at <https://www.fws.gov/species/rusty-patched-bumble-bee-bombus-affinis>, at <https://www.regulations.gov> at Docket No. FWS-R3-ES-2024-0132, 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) Index map follows:

BILLING CODE 4333-15-P

Figure 1 to Rusty Patched Bumble Bee
(Bombus affinis) Paragraph (5)

Index Map: Rusty Patched Bumble Bee
(Bombus affinis) Critical Habitat Units



(6) *Unit 1*: Minneapolis-St. Paul Metropolitan; Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, and St. Croix Counties, Minnesota.

(i) Unit 1 consists of 567,805 acres (ac) (229,782 hectares (ha)) in the Minneapolis-St. Paul metropolitan area of Minnesota in Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, and St. Croix Counties. Unit 1 is composed of primarily private lands (499,204 ac (202,021 ha)), local

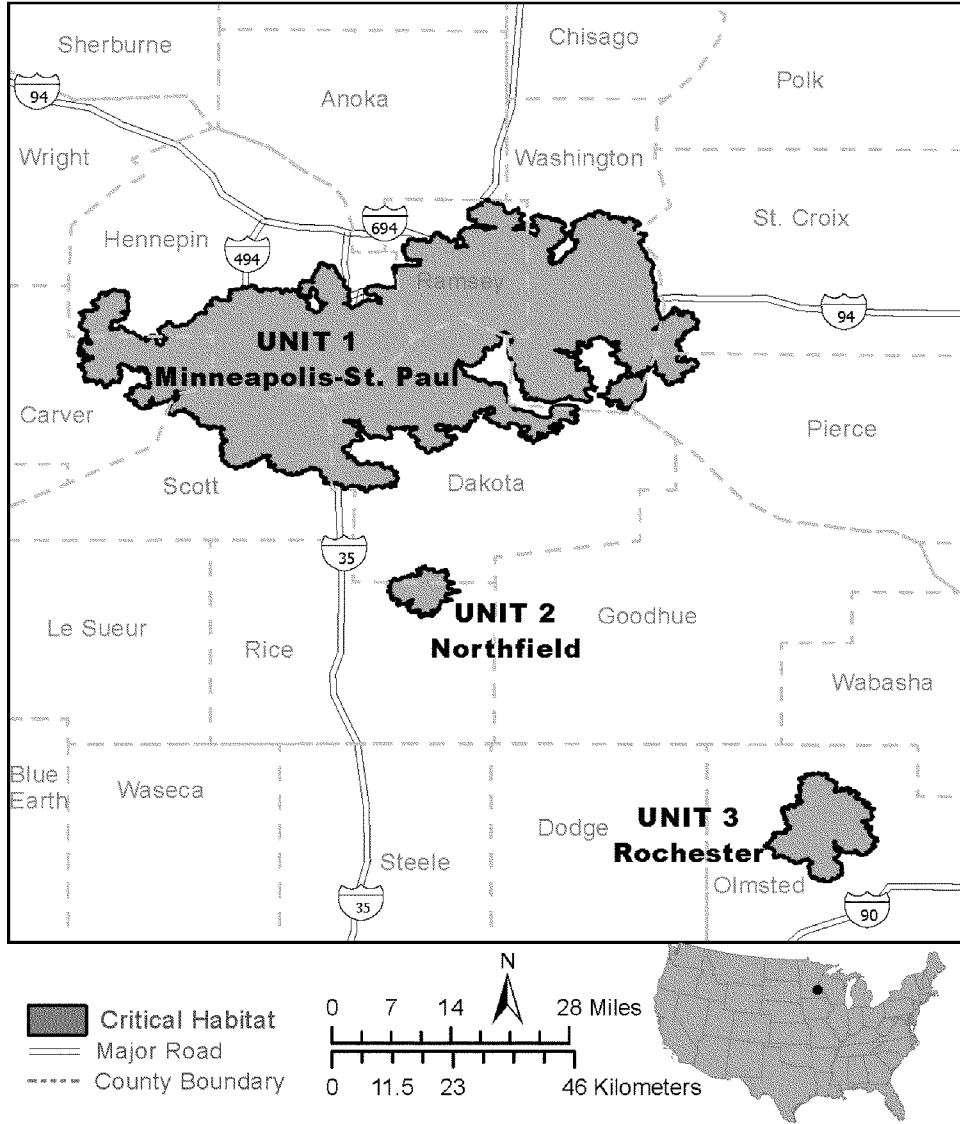
government-owned lands (40,596 ac (16,429 ha)), university or school lands (7,190 ac (2,910 ha)), Minnesota State lands (11,983 ac (4,849 ha)), and Tribal lands (3,091 ac (1,251 ha)). Federal lands (5,741 ac (2,323 ha)) in Unit 1 include National Park Service’s Mississippi National River and Recreational Area and Lower St. Croix National Scenic Riverway, and the Service’s Minnesota Valley National Wildlife Refuge. Approximately 212 ac

(86 ha) of privately owned lands are managed by the U.S. Department of Agriculture’s Natural Resources Conservation Service (USDA–NRCS) Wetlands Reserve Program. Tribal lands include Shakopee Mdewakanton Sioux Community and Shakopee Mdewakanton Sioux Community Off-Reservation Land Trust.

(ii) Map of Units 1, 2, and 3 follows:

**Figure 2 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (6)(ii)**

Critical Habitat for Rusty Patched Bumble Bee
Unit 1: Minneapolis-St. Paul; Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, St. Croix Counties, Minnesota
Unit 2: Northfield; Dakota and Rice Counties, Minnesota
Unit 3: Rochester; Olmsted County, Minnesota



(7) *Unit 2*: Northfield; Dakota and Rice Counties, Minnesota.

(i) Unit 2 consists of 12,557 ac (5,082 ha) in Dakota and Rice Counties. This unit includes private lands (12,056 ac (4,879 ha)), local government-owned lands (489 ac (198 ha)), and Minnesota State lands (12 ac (5 ha)).

(ii) Map of Unit 2 is provided at paragraph (6)(ii) of this entry.

(8) *Unit 3*: Rochester; Olmsted County, Minnesota.

(i) Unit 3 consists of 43,091 ac (17,438 ha) in Olmsted County. This unit includes private lands (41,819 ac (16,924 ha)), local government-owned lands (939 ac (380 ha)), and Minnesota State lands (332 ac (134 ha)).

(ii) Map of Unit 3 is provided at paragraph (6)(ii) of this entry.

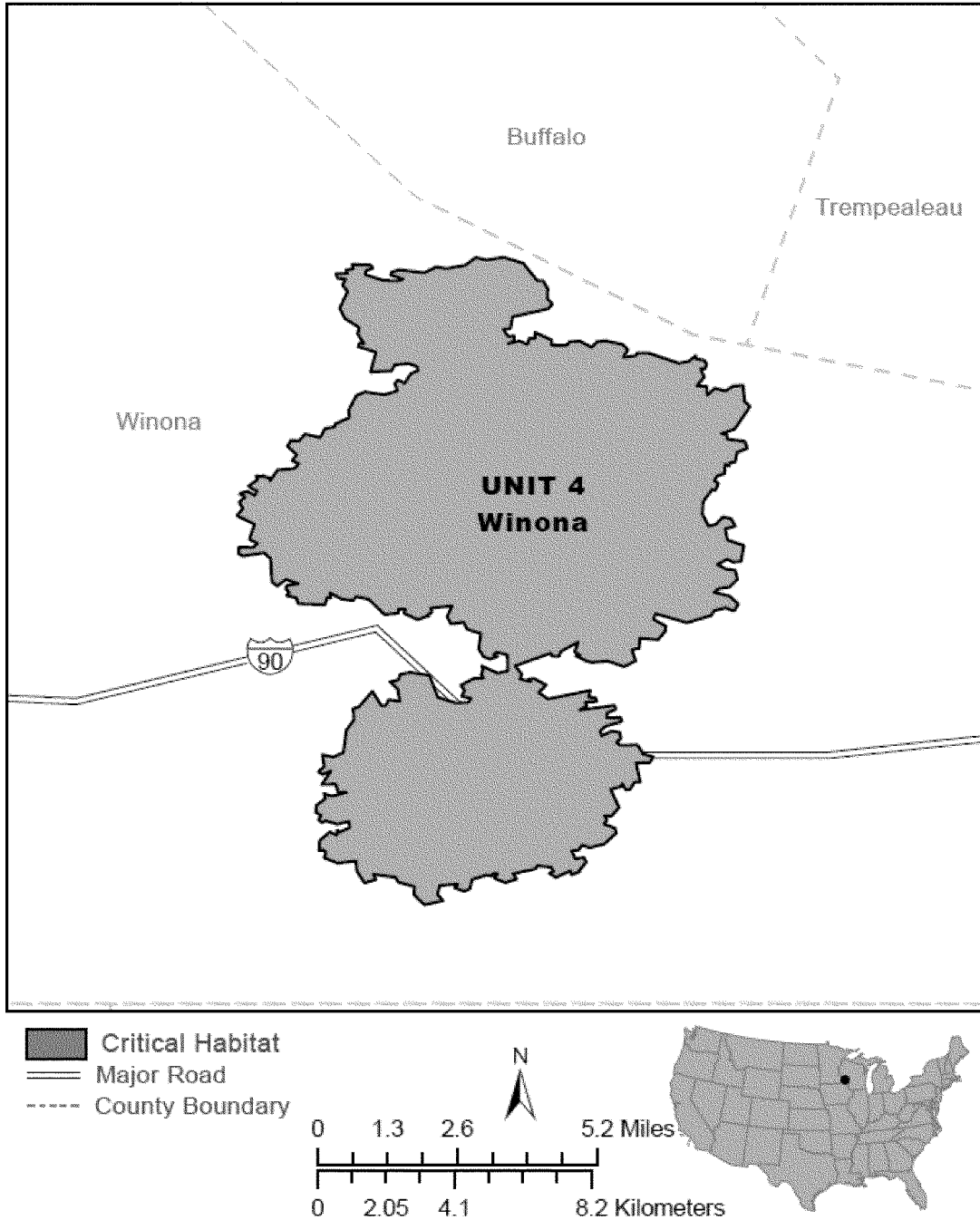
(9) *Unit 4*: Winona; Winona County, Wisconsin.

(i) Unit 4 consists of 29,823 ac (12,069 ha) in Winona County. This unit includes private lands (29,340 ac (11,873 ha)), local government-owned lands (423 ac (171 ha)), and Minnesota State lands (60 ac (24 ha)).

(ii) Map of Unit 4 follows:

Figure 3 to Rusty Patched Bumble Bee (*Bombus affinis*) Paragraph (9)(ii)

Critical Habitat for Rusty Patched Bumble Bee
Unit 4: Winona; Winona County, Minnesota



(10) Unit 5: Denzer; Sauk County, Wisconsin.

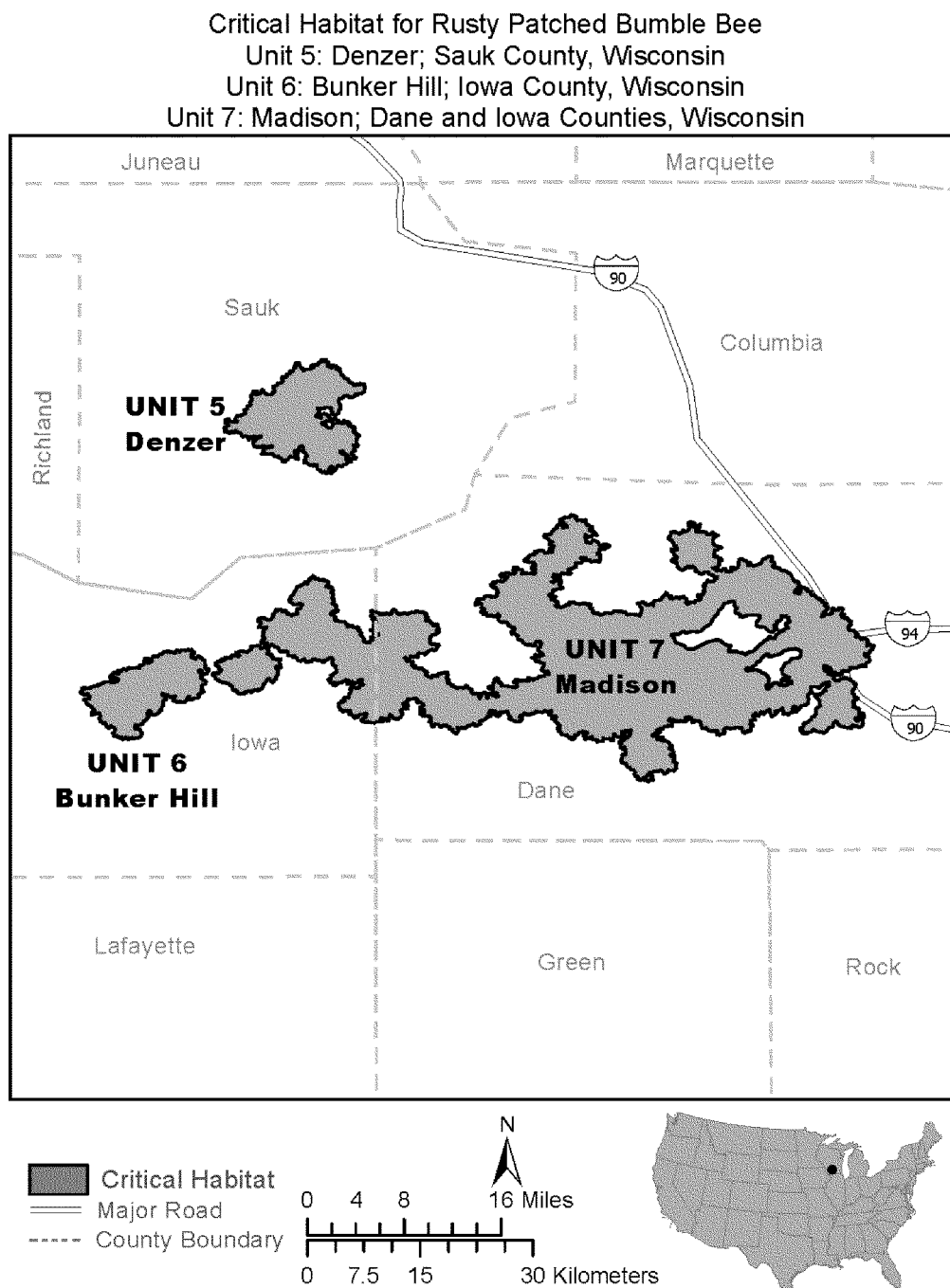
(i) Unit 5 consists of 27,009 ac (10,930 ha) in Sauk County. This unit is

composed of private lands (26,471 ac (10,712 ha)), including 2,345 ac (949 ha) owned by nongovernmental

organizations, and Wisconsin State lands (538 ac (218 ha)).

(ii) Map of Units 5, 6, and 7 follows:

Figure 4 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (10)(ii)



(11) *Unit 6:* Bunker Hill; Iowa County, Wisconsin.

(i) Unit 6 consists of 18,686 ac (7,562 ha) in Iowa County. This unit includes private lands (13,559 ac (5,487 ha)) and Wisconsin State lands (5,126 ac (2,075 ha)).

(ii) Map of Unit 6 is provided at paragraph (10)(ii) of this entry.

(12) *Unit 7:* Madison; Dane and Iowa Counties, Wisconsin.

(i) Unit 7 consists of 210,753 ac (85,289 ha) in Dane and Iowa Counties. This unit includes primarily private lands (195,952 ac (79,299 ha)), local government-owned lands (8,679 ac (3,512 ha)), university or school lands (1,086 ac (440 ha)), and Wisconsin State lands (4,518 ac (1,828 ha)). This unit contains 4 ac (2 ha) of Ho-Chunk Nation Tribal lands. Federal lands (515 ac (208 ha)) in Unit 7 include the U.S. Forest Service's Forest Products Experimental

Laboratory, National Park Service's Ice Age National Scenic Trail, and the Dane County Waterfowl Production Area owned by the U.S. Fish and Wildlife Service. In this unit, approximately 304 ac (123 ha) of private lands are managed by the USDA–NRCS Wetlands Reserve Program, and approximately 53 ac (21 ha) of private lands are managed by the USDA–NRCS Emergency Waters Protection Program.

(ii) Map of Unit 7 is provided at paragraph (10)(ii) of this entry.

(13) *Unit 8*: Milwaukee; Waukesha, Ozaukee, Washington, Milwaukee, and Racine Counties, Wisconsin.

(i) Unit 8 consists of 252,992 acres (102,382 hectares) in Waukesha, Ozaukee, Washington, Milwaukee, and Racine Counties. This unit includes

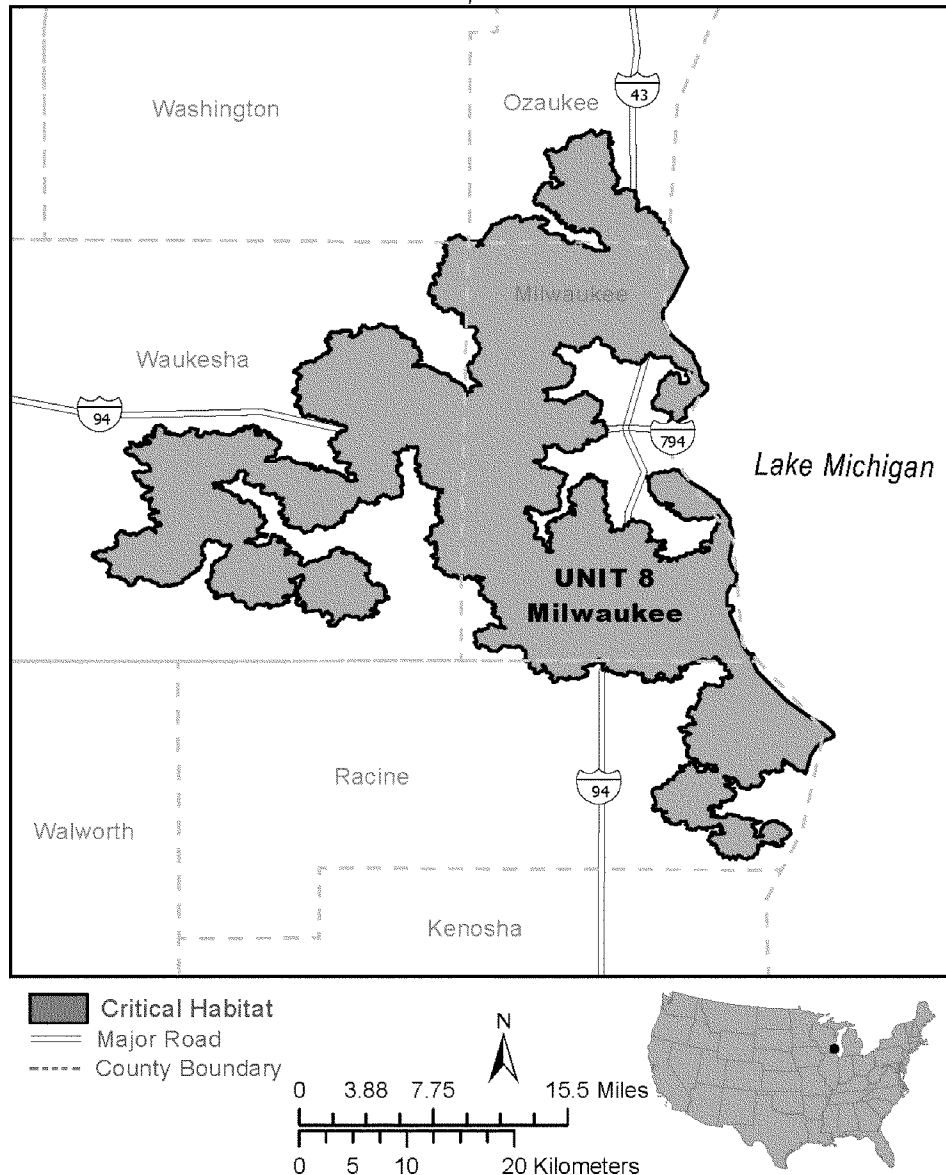
primarily private lands (232,722 ac (94,179 ha)), local government-owned lands (17,995 ac (7,282 ha)), university or school lands (14 ac (6 ha)), and Wisconsin State lands (2,121 ac (858 ha)). Tribal lands include the Forest County Potawatomi Off-Reservation Land Trust (10 ac (4 ha)). Federally owned lands include 5 ac (2 ha) owned

by the Bureau of Land Management and 126 ac (51 ha) of Department of Defense-owned lands. Approximately 66 ac (27 ha) of private lands in this unit are managed by USDA–NRCS Wetlands Reserve Program.

(ii) Map of Unit 8 follows:

Figure 5 to Rusty Patched Bumble Bee (*Bombus affinis*) Paragraph (13)(ii)

**Critical Habitat for Rusty Patched Bumble Bee
Unit 8: Milwaukee; Waukesha, Ozaukee, Washington, Milwaukee, Racine Counties, Wisconsin**



(14) *Unit 9*: Rockford; Winnebago, Boone, and Ogle Counties, Illinois.

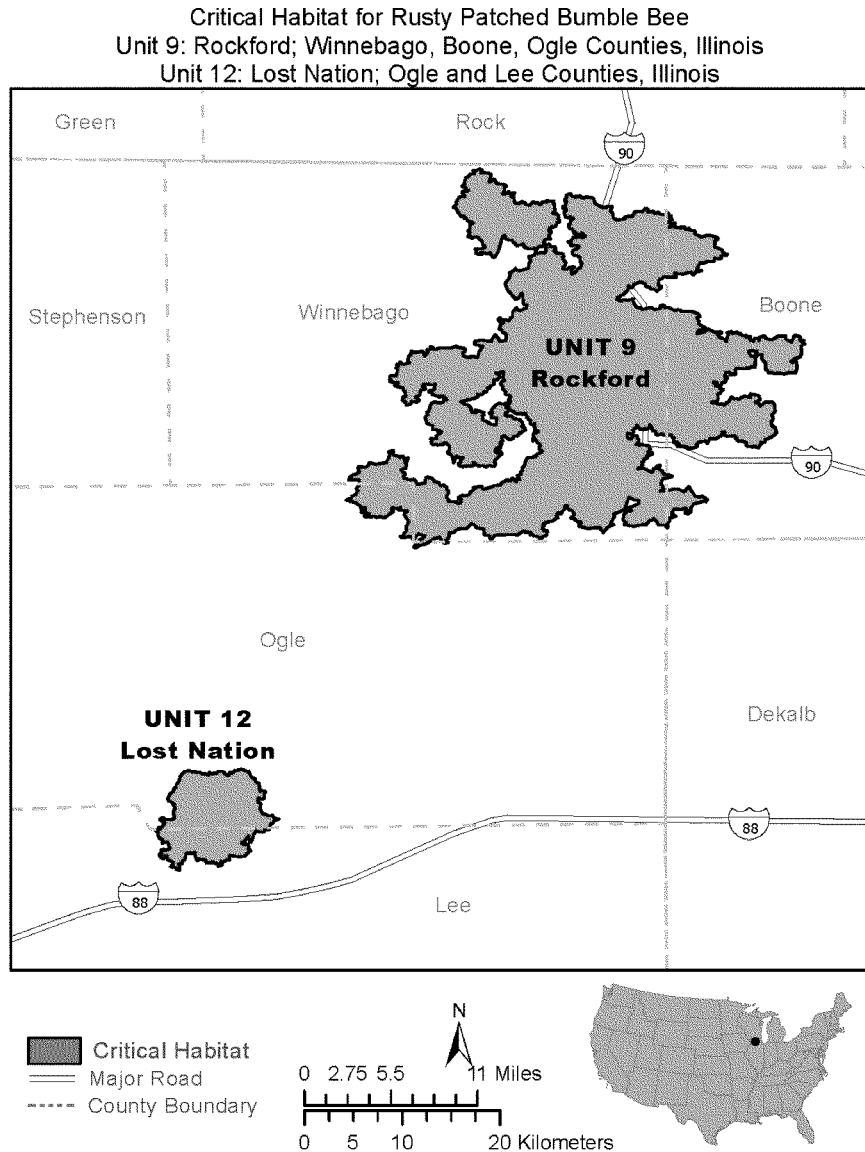
(i) Unit 9 consists of 150,108 ac (60,747 ha) in Boone, Ogle, and Winnebago Counties. This unit includes primarily private lands (136,826 ac

(55,371 ha)), local government-owned lands (7,898 ac (3,196 ha)), university or school lands (2,395 ac (969 ha)), and Illinois State lands (2,990 ac (1,210 ha)). Approximately 669 ac (271 ha) of private lands in this unit are managed

by the USDA–NRCS Wetlands Reserve Program.

(ii) Map of Unit 9 and 12 follows:

Figure 6 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (14)(ii)



(15) *Unit 10*: McHenry; McHenry and Lake Counties, Illinois, and Kenosha County, Wisconsin.

(i) Unit 10 consists of 68,295 ac (27,638 ha) in McHenry and Lake Counties, Illinois, and Kenosha County, Wisconsin. This unit includes primarily private lands (59,158 ac (23,940 ha)),

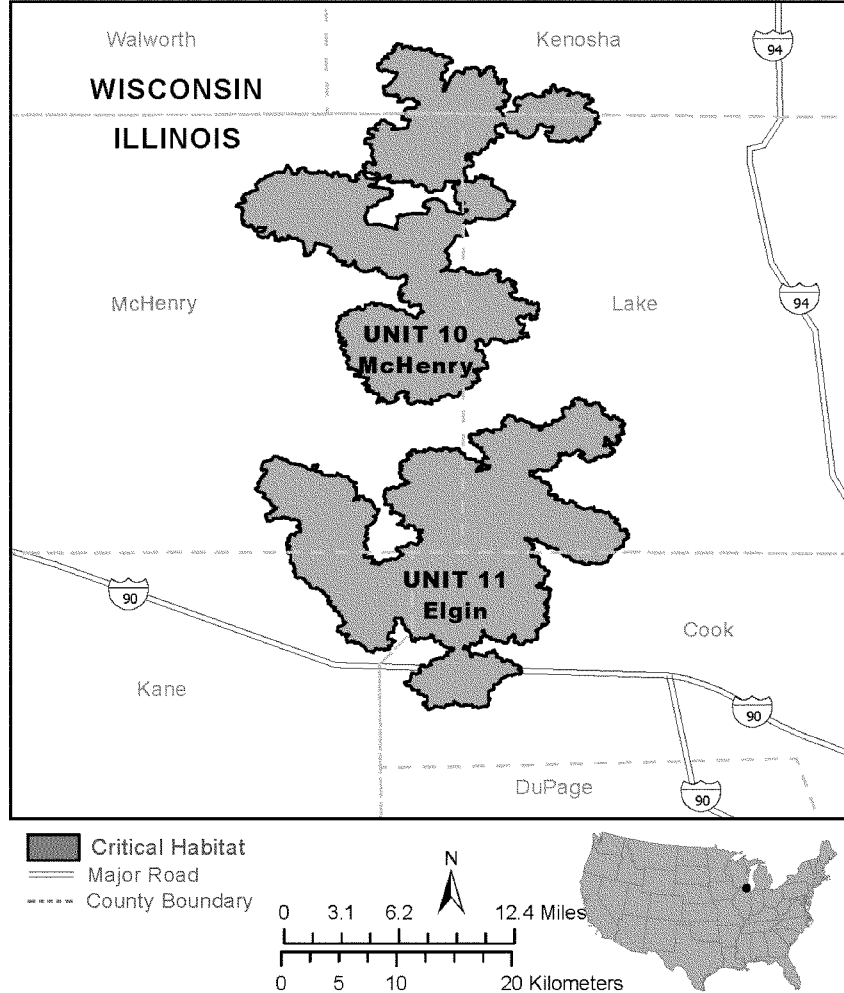
local government-owned lands (1,406 ac (569 ha)), university or school lands (2,284 ac (924 ha)), and Illinois State lands (5,445 ac (2,204 ha)). The Bureau of Land Management owns 2 ac (1 ha) of land in this unit. A conservation easement within the Hackmatack National Wildlife Refuge, managed by

the Service, falls partially (39 ac (16 ha)) within this unit. Approximately 412 ac (167 ha) of private lands within this unit are managed by the USDA–NRCS Wetlands Reserve Program.

(ii) Map of Units 10 and 11 follows:

**Figure 7 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (15)(ii)**

Critical Habitat for Rusty Patched Bumble Bee
Unit 10: McHenry; McHenry and Lake County, Illinois; Kenosha County,
Wisconsin
Unit 11: Elgin; Lake, Cook, Kane, McHenry Counties, Illinois



(16) *Unit 11*: Elgin; Lake, Cook, Kane, and McHenry Counties, Illinois.

(i) *Unit 11* consists of 75,080 ac (30,384 ha) in Cook, Kane, Lake, and McHenry Counties. This unit includes primarily private lands (56,318 ac (22,791 ha)), local government-owned lands (13,710 ac (5,548 ha)), university or school lands (4,884 ac (1,977 ha)), and Illinois State lands (168 ac (68 ha)).

(ii) Map of *Unit 11* is provided at paragraph (15)(ii) of this entry.

(17) *Unit 12*: Lost Nation; Ogle and Lee Counties, Illinois.

(i) *Unit 12* consists of 15,043 ac (6,088 ha) in Lee and Ogle Counties. This unit is composed of private lands (14,416 ac (5,834 ha)), including 2,189 ac (886 ha) owned by nongovernmental organizations, and State lands owned by Iowa Department of Natural Resources (627 ac (254 ha)).

(ii) Map of *Unit 12* is provided at paragraph (14)(ii) of this entry.

(18) *Unit 13*: Iowa City; Johnson County, Iowa.

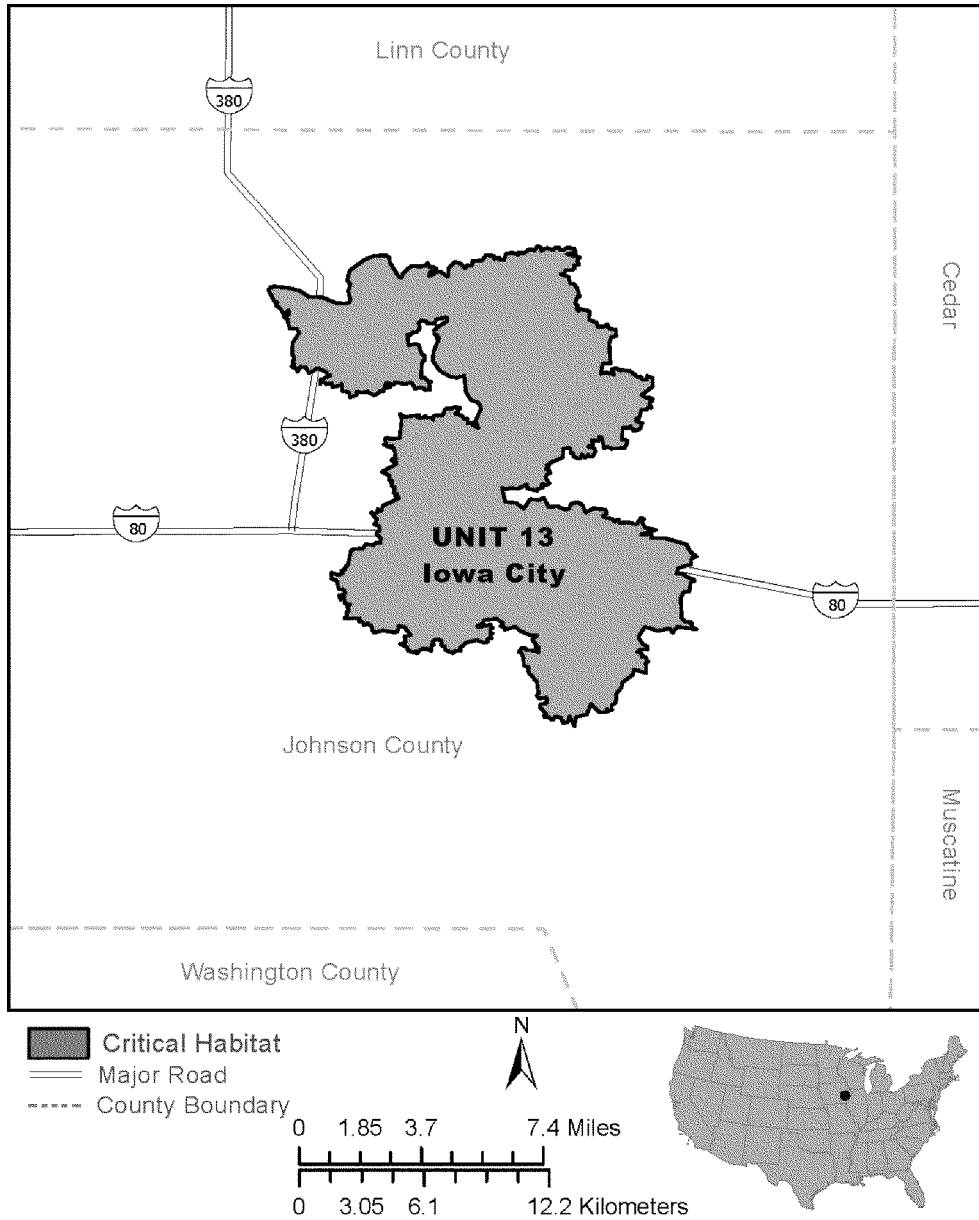
(i) *Unit 13* consists of 45,902 ac (18,576 ha) in Johnson County. This

unit includes primarily private lands (30,397 ac (12,301 ha)), local government-owned lands (1,857 ac (751 ha)), and Iowa State lands (2,287 ac (926 ha)). Federal lands (11,362 ac (4,598 ha)) in this unit include U.S. Army Corps of Engineers' Coralville Lake and the Coralville Reservoir. A portion of the U.S. Army Corps of Engineers' land in this unit is managed by the State of Illinois (1,333 ac (539 ha)) and the University of Iowa (421 ac (170 ha)).

(ii) Map of *Unit 13* follows:

Figure 8 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (18)(ii)

Critical Habitat for Rusty Patched Bumble Bee
Unit 13: Iowa City; Johnson County, Iowa



(19) *Unit 14*: Black Creek Mountain; Highland and Bath Counties, Virginia, and Greenbrier and Pocahontas Counties, West Virginia.

(i) Unit 14 consists of 118,603 ac (47,997 ha) in Highland and Bath

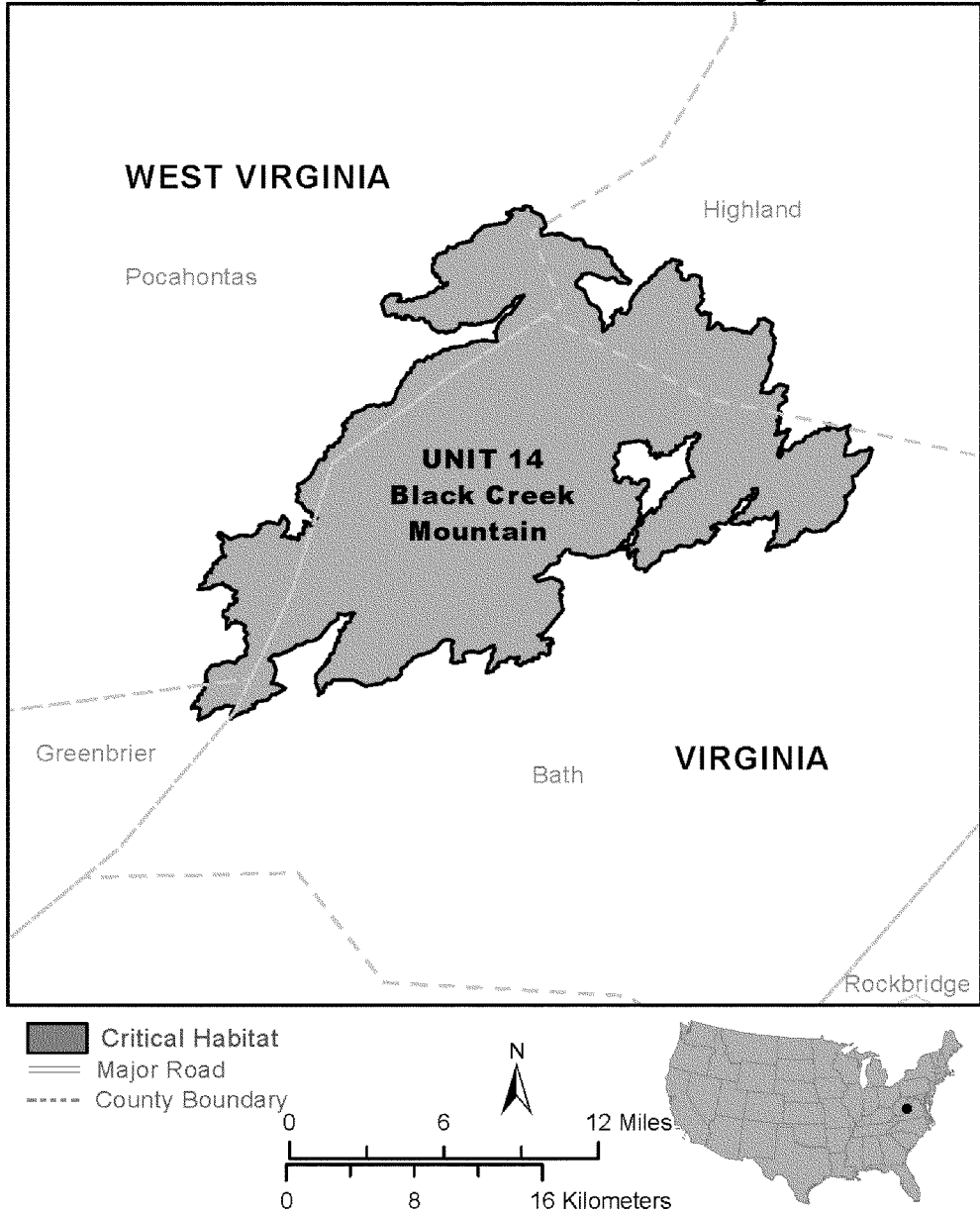
Counties, Virginia, and Greenbrier and Pocahontas Counties, West Virginia. This unit includes Federal lands (105,558 ac (42,718 ha)), private lands (11,200 ac (4,532 ha)), and Virginia State lands (1,845 ac (747 ha)). Federal lands

include the Monongahela and the George Washington–Jefferson National Forests.

(ii) Map of Unit 14 follows:

Figure 9 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (19)(ii)

Critical Habitat for Rusty Patched Bumble Bee
Unit 14: Black Creek Mountain; Highland and Bath Counties, Virginia;
Greenbrier and Pocahontas Counties, West Virginia



* * * * *

Martha Williams,
Director, U.S. Fish and Wildlife Service.
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