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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Black Pinesnake; Proposed Rule

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2014-0065; 4500030114]

RINs 1018-BA24; 1018-BA03

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Black Pinesnake**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the black pinesnake (*Pituophis melanoleucus lodingi*) under the Endangered Species Act (Act). In total, approximately 338,100 acres (136,824 hectares) in Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, and Wayne Counties, Mississippi, and in Clarke County, Alabama, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis (DEA) of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. In addition, we announce the reopening of the public comment period on the October 7, 2014, proposed rule to list the black pinesnake as a threatened species under the Act. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed listing rule as well as this proposed critical habitat rule and its associated DEA. Comments previously submitted on the proposed listing rule need not be resubmitted, as they will be fully considered in preparation of that final rule.

**DATES:** We will accept comments received or postmarked on or before May 11, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by April 27, 2015.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter Docket No. FWS-R4-ES-2014-

0065 for the proposed critical habitat rule and its associated DEA or FWS-R4-ES-2014-0046 for the proposed listing rule. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate the correct document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R4-ES-2014-0065 [for the proposed critical habitat rule and its associated DEA] or FWS-R4-ES-2014-0046 [for the proposed listing rule]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

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

The coordinates or plot points or both from which the maps are generated are included in the administrative record for the proposed critical habitat designation and are available at <http://www.fws.gov/mississippiES/>, at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2014-0065, and at the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office listed above, and may also be included in the preamble and/or at <http://www.regulations.gov>. The proposed listing rule can be read, in its entirety, at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2014-0046 or at the Field Office listed above.

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; telephone: 601-321-1122; facsimile: 601-965-4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under the Act, when we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Designations of critical

habitat can only be completed by issuing a rule. On October 7, 2014, we proposed to list the black pinesnake as a threatened species under the Act (79 FR 60406).

*This rule consists of* a proposed rule to designate critical habitat for the black pinesnake, an announcement of the availability of the associated draft economic analysis (DEA), and an announcement of the reopening of the comment period for the proposed listing rule for the black pinesnake.

*The basis for our action.* Under the Act, if we determine that a species is endangered or threatened, we must designate critical habitat to the maximum extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary shall designate to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

*We prepared a draft economic analysis of the proposed designation of critical habitat.* We are making available for public comment the DEA of the proposed designation of critical habitat for the black pinesnake.

*We will seek peer review.* We are seeking comments from independent specialists to ensure that our critical habitat proposal is based on scientifically sound data and analyses. We are inviting these peer reviewers to comment on our specific assumptions and conclusions in the critical habitat proposal. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this critical habitat proposal.

**Information Requested**

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

(1) Additional information concerning the historical and current status, range, distribution, and population size of the black pinesnake, including the locations of any additional populations of this subspecies.

(2) The black pinesnake's biology, range, and population trends, including:

(a) Biological or ecological requirements of the subspecies, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy, including interpretations of existing studies or whether new information is available;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(3) Factors that may affect the continued existence of the subspecies, which may include habitat modification or destruction, overutilization, collection for the pet trade, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(4) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this subspecies and existing regulations that may be addressing those threats.

(5) Any information concerning the appropriateness and scope of the proposed section 4(d) rule provisions for take of the black pinesnake (see the proposed listing rule at 79 FR 60406, October 7, 2014). We are particularly interested in input regarding timber and forest management and restoration practices that would be appropriately addressed through a section 4(d) rule, including those that adjust the timing or methods to minimize impacts to the subspecies or its habitat.

(6) Any additional information on current conservation activities or partnerships benefitting the subspecies, or opportunities for additional partnerships or conservation activities that could be undertaken in order to address threats.

(7) Any information on specific pesticides that could impact the black pinesnake or its prey base either directly or indirectly, which could cause further mortality or decline of the subspecies.

(8) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the subspecies from human activity, the degree to which can be expected to increase due to the designation, and whether that increase

in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(9) Specific information on:

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

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the subspecies, should be included in the designation and why;

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

(d) What areas not occupied at the time of listing are essential for the conservation of the subspecies and why.

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

(11) How the patch size of proposed critical habitat was derived (*i.e.*, how much acreage a viable population of black pinesnakes requires).

(12) Information on the projected and reasonably likely impacts of climate change on the black pinesnake and proposed critical habitat.

(13) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(14) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and is complete and accurate.

(15) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(16) 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.

(17) 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.

If you submitted comments or information on the proposed listing rule (79 FR 60406) during the initial comment period from October 7, 2014, to December 8, 2014, please do not resubmit them. We will incorporate them into the public record and we will fully consider them in the preparation of that final determination.

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

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>.

You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

All previous Federal actions are described in the proposed rule to list the black pinesnake as a threatened species under the Act published in the **Federal Register** on October 7, 2014 (79 FR 60406).

### Critical Habitat

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the black pinesnake. For information related to the listing of this subspecies, see the proposed rule.

### Background

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

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

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

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

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

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

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

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (PBFs) (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific

and commercial data available, those PBFs that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those PBFs within an area, we focus on the principal biological or physical constituent elements (primary constituent elements, or PCEs, such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. PCEs are those specific elements of PBFs that, when laid out in the appropriate quantity and spatial arrangement, provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

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

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include 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) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. 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 conservation of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### Prudency Determination

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

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

(2) Such designation of critical habitat would not be beneficial to the species.

There is currently no imminent threat of take attributed to collection or vandalism under Factor B for the black

piresnake (see the proposed listing rule published on October 7, 2014 at 79 FR 60406), and identification and mapping of critical habitat is not expected to initiate any such threat. Therefore, in the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, a finding that designation is prudent is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is unoccupied; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the black pinesnake.

Because we have determined that the designation of critical habitat will not likely increase the degree of threat to the subspecies and may provide some measure of benefit, we determine that designation of critical habitat is prudent for the black pinesnake.

#### Critical Habitat Determinability

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

- (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or
- (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

At the time of our October 7, 2014, proposed rule to list the subspecies, a careful assessment of the economic impacts was ongoing, leading us to find that critical habitat was not determinable. We have continued to review the available information related to the draft economic analysis as well as newly acquired information necessary to perform this assessment. This and other information represent the best scientific data available, and we now believe the data are sufficient for us to analyze the impacts of designation. Accordingly, we conclude that the designation of critical habitat is determinable for the black pinesnake.

#### Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR

424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the PBFs essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth, and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We derive the specific PBFs essential for the black pinesnake from studies of the subspecies and other similar species' habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule published in the **Federal Register** on October 7, 2014 (79 FR 60406). We have determined that the following PBFs are essential for the black pinesnake:

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

Telemetry studies and previous records indicate that the black pinesnake prefers an open canopy, a reduced midstory, and a dense herbaceous cover typical of a classic longleaf pine forest (see the "Habitat" and "Life History" sections of our proposed listing rule published in the **Federal Register** on October 7, 2014 (79 FR 60406)). An abundant herbaceous groundcover is typical of those areas characterized by a more open-canopied condition, as a by-product of the increased amount of sunlight reaching the forest floor. As an ectotherm (an organism that regulates its body temperature (*i.e.*, thermoregulates) primarily by exchanging heat with its surroundings), the black pinesnake requires this open condition to provide thermoregulatory opportunities, and possibly to provide proper incubation temperatures for nests.

Studies of black pinesnakes have supported this subspecies' preference for a relatively open canopy and reduced mid-story shrub cover (Duran 1998b, pp. 4–8; Baxley *et al.* 2011, p. 154). Values for these landscape features reflecting habitat structure have been estimated for the black pinesnake by looking to habitat conditions described

for the threatened gopher tortoise (*Gopherus polyphemus*), a species sharing the same habitat within the same geographic range in the longleaf pine ecosystem. Management plans for the tortoise include upland longleaf pine forest desired conditions of  $\leq 70$  percent canopy cover, a shrub cover of  $< 10$  percent, and a herbaceous groundcover of at least 40 to 50 percent (Florida Fish and Wildlife Conservation Commission (FWCC) 2012, p. 42; U.S. Forest Service 2014, p. 14; Service 2014, p. 1). These same metrics are all indicative of the forest structure in suitable black pinesnake habitat as well.

Longleaf pine ecosystems have historically been maintained with fire, as it is necessary for exposing bare mineral soil for seed germination, increasing nutrient content in forage species, and reducing competition of hardwood species (DeBerry and Pashley 2008, pp. 20–21). Prescribed burning during the growing season (late spring to early summer) is more effective at controlling mid-story hardwood vegetation, thereby promoting a more abundant herbaceous groundcover; however, some understory plants respond positively to fires in the dormant season as well (Knapp *et al.* 2009, p. 2). Therefore, fire regimes should optimally incorporate variability in their seasonality and intensity, as a heterogeneous fire regime is likely to maximize plant biodiversity (Knapp *et al.* 2009, p. 3). Management of upland longleaf pine forests should include a fire return interval of 1 to 3 years (FWCC 2012, p. 42; U.S. Forest Service 2014, p. 14), with variable seasonality and intensity in the fire regime to promote the open-canopied condition and abundant, diverse forage species that sustain the prey base (small mammals) for black pinesnakes.

A broad distribution of home ranges have been estimated from various telemetry studies, from a mean Minimum Convex Polygon (MCP) (a mathematical tool for determining home range boundaries by connecting the outer location points) value of 106 acres (ac) (43 hectares (ha)) for adult female pinesnakes (Duran 1998a, p. 19) to a mean MCP value of 551 ac (223 ha) for adult male pinesnakes (Baxley and Qualls 2009, p. 287). The maximum home range reported for a black pinesnake in the literature is 979 ac (396 ha) for an adult male, and the maximum distance between consecutive locations in a telemetry study (reported as a straight-line distance) was 1.3 miles (2.1 kilometers) (Baxley and Qualls 2009, pp. 287–288). Examination of MCP areas for black pinesnakes occupying the same general area shows very little

overlap of home ranges, providing some evidence for territoriality (Duran 1998a, p. 15). The minimum amount of habitat necessary to support a viable black pinesnake population (known as reserve area requirements) has not previously been determined, and estimating those parameters can be quite challenging, primarily based on the elusive nature of the subspecies (Wilson *et al.* 2011, pp. 42–43). We estimated a minimum black pinesnake reserve size by calculating the total area covered by two partially overlapping activity areas created from location points buffered with a radius equaling the maximum known movement distance for the subspecies (see discussion under *Criteria Used To Identify Critical Habitat*). The resulting area of 5,000 ac (2,023 ha) is considered to be a minimum population reserve size for the black pinesnake, as long as the area is not highly fragmented (see discussion under *Criteria Used to Identify Critical Habitat*). Fragmentation by roads, urbanization, or incompatible habitat conversion continues to be a major threat affecting the subspecies (see *Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence* in our proposed listing rule published in the **Federal Register** on October 7, 2014 (79 FR 60406)).

For comparison purposes we investigated the population requirements of another large-bodied, wide-ranging snake with large home ranges that is also a longleaf pine ecosystem specialist, the threatened eastern indigo snake (*Drymarchon couperi*; listed as *Drymarchon corais couperi*). Moler (1992, p. 185) recommended that large tracts of land ( $\geq 2,500$  ac (1,012 ha)) should be protected in order to have a high probability of sustaining populations of eastern indigo snakes long term. A modeling study by Sytsma *et al.* (2012, pp. 39–40) estimated a reserve size of 10,000 ac (4,047 ha) to be sufficiently large to support a small population of eastern indigo snakes. Although the eastern indigo snake's home ranges are larger than the black pinesnake's, these studies do support the need for large areas to support large, wide-ranging snake species sensitive to landscape fragmentation. Thus, based on these estimates of eastern indigo snake reserve size, the available long distance movement data for the black pinesnake, and data that describe non-overlapping large home range sizes, we believe that 5,000 ac (2,023 ha) of suitable habitat is an appropriate estimate of the minimum reserve size for a population of black pinesnakes.

Therefore, based on the information above, we identify open-canopied pine forest habitat ( $\leq 70$  percent canopy coverage), historically dominated by longleaf pine and maintained by frequent fires, a reduced midstory ( $< 10$  percent), and a diverse and abundant native herbaceous groundcover ( $> 40$  percent) to be the physical and biological features necessary for the conservation of the black pinesnake. These pine forests should be primarily unfragmented and occupy at least 5,000 ac (2,023 ha) in area.

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

Black pinesnakes are known to consume a variety of food, including nestling rabbits (*Sylvilagus aquaticus*), bobwhite quail (*Colinus virginianus*) and their eggs, and eastern kingbirds (*Tyrannus tyrannus*) (Vandeventer and Young 1989, p. 34; Yager *et al.* 2005, p. 28); however, rodents represent the most common type of prey. The majority of documented prey items are hispid cotton rats (*Sigmodon hispidus*), various mice species (*Peromyscus* spp.), and to a lesser extent eastern fox squirrels (*Sciurus niger*) (Rudolph *et al.* 2002, p. 59; Yager *et al.* 2005, p. 28). Through concurrent studies involving both snake radio-telemetry and small mammal trapping, it has been documented that the hispid cotton rat was the most frequently trapped small mammal within black pinesnake home ranges (Duran 1998a, p. 34), and that the core home ranges of telemetered black pinesnakes had higher mammal abundance (especially hispid cotton rats) compared with areas on the periphery of the snakes' home ranges (Baxley and Qualls 2009, p. 291).

To provide the refugia and food needed to support the rodent prey base of black pinesnakes, the habitat must have an abundant herbaceous groundcover. Bluestem grasses (*Andropogon* and *Schizachyrium* sp.) typically represent the dominant groundcover species of the open-canopied longleaf pine habitat within the geographic range of the black pinesnake, and bluestem grass stems are a primary food of the hispid cotton rat (Miller and Miller 2005, p. 202). Research on black pinesnakes has shown they more frequently occupy forested habitats with significantly higher cover of herbaceous understory vegetation and avoid areas with significantly higher percentages of leaf litter (Duran 1998a, p. 11; Baxley *et al.* 2011, p. 161; Smith 2011, pp. 86 and 100). Therefore, we identify as a physical and biological feature an

abundant, diverse, native groundcover, as described above under *Space for Individual and Population Growth and for Normal Behavior*.

#### *Cover or Shelter*

From radio-telemetry studies, it has been shown that black pinesnakes spend a majority of their time below ground (Duran 1998a, p. 12; Yager *et al.* 2005, p. 27; Baxley and Qualls 2009, p. 288). The subterranean environments most commonly utilized by black pinesnakes are burned-out or rotted-out stump holes (Duran 1998a, p. 12; Yager *et al.* 2005, p. 27; Baxley and Qualls 2009, p. 288). Where pine stumps have become limited, black pinesnakes may utilize gopher tortoise and nine-banded armadillo (*Dasypus novemcinctus*) burrows more frequently; however, the large diameters of these burrows might allow access to a wide array of potential predators (Rudolph *et al.* 2007, p. 563).

Rudolph *et al.* (2007, pp. 560–565) excavated five black pinesnake winter refugia (overwintering sites) utilized for significant periods of time from late fall through early spring. They were found to be located exclusively in chambers formed by the decay and burning of longleaf pine stumps and root tunnels, at depths of 3.5 to 14 inches (in) (9 to 35 centimeters (cm)) below the surface (Rudolph *et al.* 2007, pp. 560–561). There is also evidence for site fidelity towards specific winter refugia sites in the genus *Pituophis*, specifically for northern pinesnakes. Burger *et al.* (2012, p. 600) documented hibernacula use by northern pinesnakes over a 26-year period in New Jersey, and they determined that even when known hibernacula do not get used for a year, those hibernacula have a 37 percent chance of being used the following year. Data on black pinesnake habitat use document site fidelity in this subspecies as well. During research studies, black pinesnakes have been shown to return to the same general location during monitoring and to even return to the same stump hole (Yager *et al.* 2006, pp. 34–36; Baxley and Qualls 2009, p. 288). These data on microhabitat use reinforce the importance of locating and protecting known refugia, regardless of the seasonality of their use.

In addition to requiring the presence of stump holes, it is imperative that this microhabitat be in areas where the black pinesnakes' subterranean refugia will remain above the seasonal water table, as flooding may increase the potential for harm to the snakes. An examination of elevation thresholds in the black pinesnake locality data indicates that the subspecies occurs most frequently along upland ridges. We determined

that 90 percent (329) of all black pinesnake locations (post-1980) occurred in areas  $\geq 200$  feet (ft) (61 meters (m)) elevation, and 96 percent of these locations (349) were in areas  $\geq 150$  ft (46 m).

Therefore, based on the information above, we identify the presence of naturally burned-out or rotted-out pine stumps and their associated root systems in upland areas at an elevation  $\geq 150$  ft (46 m), within historically longleaf-dominated pine forests, to be a physical and biological feature needed for the conservation of this subspecies.

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

Very little information on breeding and egg-laying of wild black pinesnakes is available. Lyman *et al.* (2007, pp. 40–42) documented mating activities at the entrance to armadillo burrows, and Lee (2007, p. 93) described mating in a pair of black pinesnakes above ground, but in the vicinity of a rotted-out pine root system that the pair subsequently occupied. The only documented natural nest for the subspecies is a clutch of 6 recently hatched black pinesnake eggs found 29 in (74 cm) below the soil surface at the end of a juvenile gopher tortoise burrow (burrow width: 2.5 in (6 cm)) in Perry County, Mississippi (Lee *et al.* 2011, p. 301). The microhabitat within the tortoise burrow likely provides a suitable microclimate for egg incubation in warm climate areas (Lee *et al.* 2011, p. 301). Female northern pinesnakes are known to excavate tunnels and nest chambers for egg deposition (Burger and Zappalorti 1992, p. 331), but it is unknown whether female black pinesnakes excavate their own nests or only utilize and modify existing tunnels.

Since there is only one documented natural black pinesnake nest, it is unknown whether the subspecies exhibits nest site fidelity; however, nest site fidelity has been described for other *Pituophis* species and subspecies. Burger and Zappalorti (1992, pp. 333–335) conducted an 11-year study of nest site fidelity of northern pinesnakes in New Jersey and documented the exact same nest site being used for 11 years in a row, evidence of old egg shells in 73 percent of new nests, and recapture of 42 percent of female snakes at prior nesting sites.

In addition to the stump holes and associated root systems commonly used by adult black pinesnakes (Duran 1998a, p. 12; Yager *et al.* 2005, p. 27; Baxley and Qualls 2009, p. 288), radio-telemetry data have shown that yearling and young juvenile black pinesnakes frequently use small mammal burrows,

specifically eastern mole (*Scalopus aquaticus*) tunnels, as retreat sites (Lyman *et al.* 2007, pp. 39–41). Because of this documented utilization and modification of existing burrow and tunnel systems, it is necessary for black pinesnakes to have access to areas with sandy soils for ease of excavation.

Appropriate soils have been described for the gopher tortoise, and are recognized as one of their key habitat requirements, as they allow for burrow excavation and nest development (Ernst *et al.* 1994, p. 466). Gopher tortoises typically occur where soils have high sand content, low clay content, and little to no stones or gravel; the soils are often well-drained and are deep to a water table (Service 2012, p. 3). When sufficient sunlight reaches the forest floor, sandy soils also promote herbaceous ground cover (component of PCE 1) as food for rodents (primary prey of the black pinesnake), and provide the appropriate environment for egg incubation and hatching (Service 2012, p. 3). Because black pinesnakes share a requirement for sandy soils with the gopher tortoise, and the two occur within the same habitat, characteristics of suitable gopher tortoise soils can also be used to describe appropriate black pinesnake soils. These soil characteristics include: (1) No flooding or ponding; (2)  $< 15$  percent medium and coarse gravel fragments; (3)  $> 60$  in (152 cm) depth to seasonal high water table (elevation to which the ground or surface water can be expected to rise due to a normal or wet season); (4)  $> 60$  in (152 cm) depth to the hardpan (dense layer of soil impervious to plant roots and water); (5) textural components equaling  $> 30$  percent sand and  $< 35$  percent clay; and (6) a slope  $< 15$  percent (Service 2012, p. 6). The association of black pinesnakes utilizing these soil types is corroborated in telemetry work by Duran (1998b, p. 15), which showed that snakes in his study spent most of their time on well-drained soils determined to be appropriate for gopher tortoises.

Therefore, based on the information above, we identify sandy, well-drained soils characteristic of historically longleaf-dominated upland pine forest to be a physical and biological feature for this subspecies. These specific soil series and related soil associations have the following characteristics: No flooding or ponding;  $< 15$  percent medium and coarse gravel fragments;  $> 60$  in (152 cm) depth to seasonal high water table;  $> 60$  in (152 cm) depth to the hardpan; textural components equaling  $> 30$  percent sand and  $< 35$  percent clay; and a slope  $< 15$  percent.

**Primary Constituent Elements for the Black Pinesnake**

According to 50 CFR 424.12(b), we are required to identify the PBFs essential to the conservation of the black pinesnake in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider PCEs to be those specific elements of PBFs that provide for a species' life-history processes and are essential to the conservation of the species.

(1) Primary Constituent Element 1: *Tract size and habitat structure.* A longleaf pine-dominated forest maintained by frequent fire, and primarily having the following characteristics:

- (a) Open canopy ( $\leq 70$  percent);
- (b) Reduced woody mid-story ( $< 10$  percent cover);
- (c) Abundant, diverse, native groundcover (at least 40 percent cover); and
- (d) Minimum of 5,000 ac (2,023 ha) of mostly unfragmented habitat.

(2) Primary Constituent Element 2: *Refugia sites and topographic features.* Naturally burned-out or rotted-out pine stumps and their associated root systems, in longleaf pine forests on ridges with elevation of 150 ft (46 m) or greater.

(3) Primary Constituent Element 3: *Soils.* Deep, sandy, well-drained soils of longleaf pine forest, characterized by:

- (a) No flooding or ponding;
- (b)  $< 15$  percent medium and coarse gravel fragments;
- (c)  $> 60$  in (152 cm) depth to seasonal high water table;
- (d)  $> 60$  in (152 cm) depth to the hardpan;
- (e) Textural components equaling  $> 30$  percent sand and  $< 35$  percent clay; and
- (f) A slope  $< 15$  percent.

**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.

All areas proposed as critical habitat would require some level of management to address the current and future threats to the black pinesnake and to maintain the PCEs. Special management of the upland longleaf pine forest would be needed to ensure an open canopy, reduced mid-story, and abundant herbaceous ground cover (PCE

1); underground refugia for snakes to occupy (PCE 2); and relatively unfragmented tracts of pine forests (PCE 1).

A detailed discussion of activities affecting the black pinesnake and its habitat can be found in the proposed listing rule published in the **Federal Register** on October 7, 2014 (79 FR 60406). The features essential to the conservation of this subspecies may require special management considerations or protection to reduce threats posed by: Land use conversion, primarily urban development and conversion to agriculture and pine plantations; timber management practices, including clear-cutting, stump removal, or other ground-disturbing activities; fire suppression and low fire frequencies; random effects of drought or floods; encroachment of invasive species; fragmentation from new roads or development; road mortality; and creation of utility pipelines and powerlines.

Management activities that could ameliorate these threats include (but are not limited to): Maintaining critical habitat areas as open pine habitat (preferably longleaf pine); conducting forestry management using frequent prescribed burning (1 to 3 years) with seasonal variability, avoiding intensive site preparation that would disturb or destroy pine stumps, avoiding the practice of bedding when planting trees, and reducing planting densities to create or maintain an open canopied forest with abundant herbaceous ground cover; maintaining forest underground structure such as gopher tortoise burrows, small mammal burrows, and stump holes; and retaining large tracts of pine forest unfragmented by protecting sites from development and new road construction. More information on the special management considerations for each critical habitat unit is provided in the individual unit descriptions below.

#### **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 occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act

and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. Here, as discussed below, we are not currently proposing to designate any areas outside the geographical area occupied by the black pinesnake because we have determined that occupied areas are sufficient for the conservation of the subspecies.

We began our determination of which areas to designate as critical habitat for the black pinesnake with an assessment of the critical life-history components of the subspecies, as they relate to habitat. We reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of this subspecies. We focused on the identification of large tracts of remaining unfragmented open pine habitat in our analysis because they are requisite sites for population survival and conservation and their disappearance in the environment is one of the primary reasons that the black pinesnake is declining. Our sources included surveys, unpublished reports, and peer-reviewed scientific literature prepared by the Alabama Department of Conservation and Natural Resources; Alabama Natural Heritage Program; Mississippi Department of Wildlife, Fisheries, and Parks Natural Heritage Program; and black pinesnake researchers. Other sources are Service data and Geographic Information System (GIS) data (such as species occurrence data, elevation contours, soils, transportation, urban areas, National Wetland Inventory, 2011 National Land Cover Database, aerial imagery, ownership maps, and U.S. Geological Survey (USGS) Terrestrial Ecosystems data).

For estimation of activity ranges of black pinesnakes, we utilized the process of establishing species occurrence areas (SOAs), which the New Jersey Department of Environmental Protection (NJDEP) uses for northern pinesnakes. These areas are derived by placing circular buffers around documented locations, in order to approximate typical activity ranges (NJDFW 2009, p. 17). There are unproven assumptions that underlie this method, such as that pinesnakes have circular activity ranges, and that the occurrence location represents the center of that individual's range; however, given the lack of representative telemetry data for many areas, this is a suitable approach to estimate activity ranges. We placed circular buffers around recent black pinesnake location points (post-1990)

from the sources listed above, with a radius equaling the maximum known movement distance (1.3 miles (2.1 km)) to approximate the SOA of each snake (3,400 ac (1,376 ha)). The 1990 date was used as it coincides with dates chosen by black pinesnake researchers who conducted habitat assessments at what were considered recently and historically occupied locations (Duran and Givens 2001, pp. 5–9). By utilizing GIS, we looked for areas of overlap between activity ranges, and calculated that the total area covered by two partially overlapping SOA estimates (5,000 ac (2,023 ha)) would be considered a minimum population reserve size, as long as the area was not highly fragmented. This is not to say that two snakes are considered a viable population, but that this area estimate should be considered a minimum value.

To examine the possibility of an elevation threshold from the locality data, recent black pinesnake records were obtained from the sources listed above. By overlapping these locality data with GIS elevation contour data, we determined that 90 percent (329) of all black pinesnake locations occurred in areas  $\geq 200$  ft (61 m) elevation, and 96 percent of these locations (349) were in areas  $\geq 150$  ft (46 m) elevation.

Soils determined to be suitable habitat for the gopher tortoise were used as a surrogate to determine suitable soils for the black pinesnake, as these both occupy deep, sandy soils of upland longleaf pine forest. A team of biologists and soil scientists from the Service and the Natural Resources Conservation Service, with input from staff from the U.S. Forest Service, developed a model to classify soils throughout the gopher tortoise's federally listed range (Service 2012, pp. 1–37). These specific soil characteristics are detailed in the *Primary Constituent Elements for the Black Pinesnake* section, above.

Using GIS, we located all areas where at least two black pinesnake activity ranges overlapped, and identified those as potential populations. Areas within and directly adjacent to these black pinesnake activity ranges that met the soils and elevation criteria were considered contiguous habitat and were included in potential population boundaries. There were 11 populations identified using this method: 6 in Mississippi and 5 in Alabama. These populations were then assessed in regards to impacts from nearby fragmentation sources such as major roads, wetlands and open water, incompatible land use (such as agricultural conversion), and urban development.



To analyze potential impacts from roads, a transportation layer was used with GIS, specifically examining Class 1 and 2 roads. Class 1 roads are hard surface highways including Interstate and U.S. numbered highways, primary State routes, and all controlled access highways; Class 2 roads include secondary State routes, primary county routes, and other highways that connect principal cities and towns. Both of these road classifications have a high probability of causing permanent black pinesnake population fragmentation and were excluded. Population boundaries were buffered at least 100 meters from all Class 1 and 2 roads. Major wetland areas and streams were avoided in determining population boundaries, although these generally were consistent with changes in elevation. To analyze the fragmentation effects from incompatible land uses (including but not limited to urbanization), recent aerial imagery and the 2011 National Land Cover Database (NLCD) were utilized. By selecting the evergreen forest layers from NLCD, it was possible to delineate large tracts of remaining pine forested habitat, and concurrent analysis from the aerial imagery further removed areas with agricultural fields, housing developments, and urban areas.

Once all the above analyses were complete, the level of fragmentation in each population was assessed. If fragmentation within a population boundary limited the suitable habitat to the point where less than 5,000 ac (2,023 ha) was available, that population was no longer considered viable and was removed from critical habitat consideration.

Using the above-described process, eight of the 11 populations examined met the criteria for consideration as critical habitat: All six of the populations in Mississippi and two of the five in Alabama. Five of the six Mississippi populations occur at least partially on the De Soto National Forest, the largest of which is located almost exclusively on the Camp Shelby Special Use Permit area, and the sixth population occurs primarily on the Marion County Wildlife Management Area (WMA). All six populations meet the criteria of appropriate size; contiguous, pine-dominated, forested habitat; elevation; soils; and minimal fragmentation. The Service has determined that these sites contain the PCEs that are essential for the conservation of the black pinesnake, and therefore we are proposing to designate them as critical habitat.

Both of the Alabama populations that met the criteria to be considered critical habitat are located in Clarke County and

include a population primarily located on the Scotch WMA and a population located at the Fred T. Stimpson WMA. Three other populations, in Washington and Mobile Counties, each have two black pinesnake records from the last 25 years, but due to fragmentation do not meet the criteria for critical habitat and therefore are not proposed for designation.

We have determined that the areas we are proposing for designation as critical habitat contain the PCEs that are essential for the conservation of the black pinesnake based on our current understanding of the subspecies' requirements. However, as discussed in the Critical Habitat section above, we recognize that designation of critical habitat might not include all habitat areas that we may eventually determine are necessary for the recovery of the subspecies and that for this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the subspecies.

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

The proposed critical habitat designation does not include all forested areas known to have been occupied by the subspecies historically; instead, it focuses on occupied areas within the current range that have retained the necessary PCEs that will allow for the maintenance and expansion of existing populations.

In summary, for areas within the geographic area occupied by the subspecies at the time of listing, we delineated critical habitat unit boundaries using the following criterion: Evaluate habitat suitability of forested parcels within the geographic area occupied at the time of listing (post 1990), and retain those segments that contain some or all of the PCEs to support life-history functions essential for conservation of the subspecies.

#### **Areas Not Occupied at the Time of Listing**

We are not proposing any areas outside the geographical areas occupied by the black pinesnake at the time of listing for critical habitat designation. The proposed units within the area occupied by the subspecies at the time of listing are representative of the current geographical range and include both the core population areas of black pinesnakes, as well as remaining peripheral population areas. We determined that there was sufficient area for the conservation of the subspecies within the occupied areas determined above.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the black pinesnake. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands nor all lands covered under the Camp Shelby integrated natural resources management plan (INRMP), which are exempted from proposed critical habitat designation (see *Application of Section 4(a)(3) of the Act* under Exemptions, below). Thus, any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PBFs in the adjacent critical habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the Proposed Regulation Promulgation section. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R4-ES-2014-0065, on our Internet site at <http://www.fws.gov/mississippiES/>, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

#### **Proposed Critical Habitat Designation**

We are proposing to designate approximately 338,100 ac (136,824 ha) in eight units, one of which is divided into two subunits, as critical habitat for the black pinesnake. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the black pinesnake. The areas we propose as critical habitat are all occupied at the time of listing and contain all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies including:

Unfragmented tracts of pine forest of sufficient size and structure (PCE 1); suitable underground refugia sites at appropriate elevation (PCE 2); and deep, sandy soils (PCE 3).

The areas we propose as critical habitat are: Unit 1—Ovett; Unit 2—Piney Woods Creek; Unit 3—Cypress Creek; Unit 4A—Maxie; Unit 4B—Maxie; Unit 5—Howison; Unit 6—Marion County WMA; Unit 7—Scotch

WMA; and Unit 8—Fred T. Stimpson WMA.

Table 1 provides the location, approximate area, and ownership of each critical habitat unit.

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

Unit	County	Ownership				Total area
		Federal	State	Local	Private	
<b>MISSISSIPPI</b>						
1—Ovett .....	Jones, Wayne	40,637 ac (16,445 ha).	.....	.....	6,540 ac (2,647 ha).	47,177 ac (19,092 ha).
2—Piney Woods Creek .....	Perry, Wayne	17,744 ac (7,181 ha).	.....	.....	4,645 ac (1,880 ha).	22,389 ac (9,061 ha).
3—Cypress Creek .....	Perry, Greene, George, Forrest.	131,045 ac (53,032 ha).	1,768 ac (715 ha).	41 ac (16 ha) ..	12,289 ac (4,973 ha).	145,143 ac (58,737 ha).
4A—Maxie .....	Forrest, Stone	8,883 ac (3,595 ha).	.....	.....	6,334 ac (2,563 ha).	15,217 ac (6,158 ha).
4B—Maxie .....	Forrest, Perry, Stone.	28,233 ac (11,425 ha).	.....	.....	16,078 ac (6,507 ha).	44,311 ac (17,932 ha).
5—Howison .....	Stone, Harrison	9,371 ac (3,792 ha).	.....	640 ac (259 ha).	2,938 ac (1,189 ha).	12,949 ac (5,240 ha).
6—Marion County WMA .....	Marion .....	.....	5,587 ac (2,261 ha).	.....	6,270 ac (2,537 ha).	11,857 ac (4,798 ha).
<b>ALABAMA</b>						
7—Scotch WMA .....	Clarke .....	.....	.....	.....	33,395 ac (13,514 ha).	33,395 ac (13,514 ha).
8—Fred T. Stimpson WMA .....	Clarke .....	.....	2,547 ac (1,031 ha).	.....	3,114 ac (1,260 ha).	5,661 ac (2,291 ha).
Total Area .....	.....	235,915 ac (95,471 ha).	9,902 ac (4,007 ha).	681 ac (276 ha).	91,603 ac (37,070 ha).	338,100 ac (136,824 ha).

Note: Area sizing 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 black pinesnake, below.

*Unit 1: Ovett—Jones and Wayne Counties, Mississippi*

Unit 1 encompasses approximately 47,177 ac (19,092 ha) on Federal and private land in Jones and Wayne Counties, Mississippi. This unit is located between the Bogue Homo River and Thompson Creek, is approximately 2.0 mi (3.2 km) northeast of Ovett, and is mostly within the boundary of the Chickasawhay Ranger District of the De Soto National Forest (DNF). It is located just east of State Highway 15, west of Salem Road, north of the intersection of State Highway 15 and County Road 205, and approximately 1.3 mi (2.1 km) south of the intersection of Freedom Road and Forest Road.

The majority of this unit (40,637 ac (16,445 ha)) is on Federal lands within the DNF, with the remainder of the unit (6,540 ac (2,647 ha)) on private land.

Unit 1 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of eight black pinesnakes located within Unit 1 since 1990. Many of these are located on the higher ridges within the unit boundary, but are within close enough proximity to each other (with contiguous habitat between) for all of them to belong to the same breeding population. Habitat management on the section of this unit owned by the U.S. Forest Service (86 percent) is performed under the Revised Land and Resource Management Plan for National Forests in Mississippi (U.S. Forest Service 2014, 207 pp.). The other 14 percent is privately owned. This forest plan contains objectives for the threatened gopher tortoise and endangered red-cockaded woodpecker (*Picoides borealis*), both of which occur on Unit 1. These objectives include restoring and opening up canopy conditions in areas with sandy soils and

in mature and old-growth pine forests and woodlands, with 1- to 3-year fire intervals; however, there are no management practices outlined in this plan that specifically target all of the habitat requirements of the black pinesnake.

Threats to the black pinesnake and its habitat in Unit 1 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; utility easements; road mortality; and encroachment of invasive species.

*Unit 2: Piney Woods Creek—Wayne and Perry Counties, Mississippi*

Unit 2 encompasses approximately 22,389 ac (9,061 ha) on Federal and private land located primarily in Wayne County, Mississippi, with a small portion extending into Perry County, Mississippi. This unit is located between Thompson Creek and Piney Woods Creek, is approximately 4.0 mi (6.4 km) west of Clara, and is mostly within the boundary of the Chickasawhay Ranger District of the DNF. It is located 2.3 mi (3.7 km) north of the intersection of Camp Eight Road and Will Best Road, and 0.4 mi (0.6 km) southeast of the intersection of Clara-Strengthford Road and Clara-Strengthford Reservoir Road.

The majority of this unit (17,744 ac (7,181 ha)) is on Federal lands within the DNF, with the remainder of the Unit (4,645 ac (1,880 ha)) on private land. Unit 2 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of five black pinesnakes located within Unit 2 since 1990. Many of these are located on the higher ridges within the unit boundary, but are within close enough proximity to each other (with contiguous habitat between) for all of them to belong to the same breeding population. Habitat management on the section of this unit owned by the U.S. Forest Service (79 percent) is performed under the Revised Land and Resource Management Plan for National Forests in Mississippi (U.S. Forest Service 2014, 207 pp.) (see discussion under Unit 1, above).

Threats to the black pinesnake and its habitat in Unit 2 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 3: Cypress Creek—Forrest, Perry, George, and Greene Counties, Mississippi*

Unit 3 is the largest of all the units, encompassing approximately 145,143 ac (58,737 ha) on Federal, State, local, and private land in Forrest, Perry, George, and Greene Counties, Mississippi. This

unit is located north of Black Creek (Cypress Creek runs into part of the unit, but is not a barrier to gene flow), and is approximately 3.0 mi (4.8 km) east of McLaurin, 1.8 mi (2.9 km) south of New Augusta, and 4.6 mi (7.4 km) northwest of Benndale. Unit 3 is mostly within the installation boundary of Camp Shelby on the De Soto Ranger District of the DNF, and is bordered by State Highways 26 and 57 and U.S. Highways 49 and 98.

The majority of this unit (131,045 ac (53,032 ha)) is on Federal lands, with another 1,768 ac (715 ha) on State lands; 41 ac (16 ha) on local, county-owned lands; and the remainder (12,289 ac (4,973 ha)) on private land. This unit contains 5,735 ac (2,321 ha) of State- and Department of Defense (DoD)-owned lands that are covered under the Camp Shelby INRMP, which are exempted from proposed critical habitat designation (see *Application of Section 4(a)(3) of the Act* under Exemptions, below). Unit 3 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are over 100 records of black pinesnakes located within Unit 3 since 2004, as compiled by The Nature Conservancy's Camp Shelby Field Office. Many of these are located on the higher ridges within the unit boundary, but are within close enough proximity to each other (with contiguous habitat between) for all of them to belong to the same breeding population. Habitat management on the section of this unit owned by the U.S. Forest Service is performed under the Revised Land and Resource Management Plan for National Forests in Mississippi (U.S. Forest Service 2014, 207 pp.). In addition to containing objectives for the threatened gopher tortoise and endangered red-cockaded woodpecker, both of which occur on Unit 3 (see discussion under Unit 1, above), it also includes objectives for the endangered dusky gopher frog (*Rana sevosa*), which has three critical habitat units totaling 961.8 ac (389.2 ha), also located within Unit 3. Forest plan objectives for the dusky gopher frog include upland forest management to restore and improve open-canopied conditions compatible with black pinesnake habitat requirements.

Threats to the black pinesnake and its habitat in Unit 3 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil

structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 4: Maxie—Forrest, Perry, and Stone Counties, Mississippi*

Unit 4 encompasses a total of approximately 59,527 ac (24,090 ha) on Federal and private land in Forrest, Perry, and Stone Counties, Mississippi. Located south of Black Creek and 3.0 mi (4.8 km) north of Wiggins, this unit is bisected into two subunits (4A and 4B) by U.S. Highway 49. Both subunits are buffered from U.S. Highway 49 by at least 328 ft (100 m). The close proximity of black pinesnake records with adjacent suitable habitat would have made Unit 4 a single unit following the criteria for designation of critical habitat, if not for the presence of U.S. Highway 49, which is a significant source of fragmentation and is potentially restricting gene flow between the two subunits.

Subunit 4A is located between Double Branch and U.S. Highway 49 in Forrest and Stone Counties, Mississippi. It is 0.3 mi (4.8 km) northwest of Bond and 0.5 mi (0.8 km) southwest of Maxie, and is located mostly within the boundary of the De Soto Ranger District of the DNF. Most of this subunit (8,883 ac (3,595 ha)) is on Federal lands within the DNF, with the remainder of the subunit (6,334 ac (2,563 ha)) on private land. There are records of two black pinesnakes located within subunit 4A since 1990. These are located on the eastern edge of the subunit, but have contiguous habitat with the rest of the area.

Subunit 4B is located between Black Creek and U.S. Highway 49 in Forrest, Perry, and Stone Counties, Mississippi. It is directly adjacent to Maxie on the western border, and is located mostly within the boundary of the De Soto Ranger District of the DNF. Most of this subunit (28,233 ac (11,425 ha)) is on Federal lands within the DNF, with the remainder of the subunit (16,078 ac (6,507 ha)) on private land. There are records of four black pinesnakes located within subunit 4B since 1990. These are located on the higher ridges of the subunit, but have contiguous habitat with the rest of the area.

Both subunits of Unit 4 are within the geographic area of the subspecies occupied at the time of listing. They contain all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation

of the subspecies. Habitat management on the section of these subunits owned by the U.S. Forest Service (86 percent) is performed under the Revised Land and Resource Management Plan for National Forests in Mississippi (U.S. Forest Service 2014, 207 pp.). This forest plan contains objectives for the threatened gopher tortoise, which occurs on both subunits of Unit 4. These objectives include restoring and opening up canopy conditions in areas with sandy soils with 1- to 3-year fire intervals; however, there are no management practices outlined in this plan that specifically target the habitat requirements of the black pinesnake. Subunit 4B also contains two units designated as critical habitat for the endangered dusky gopher frog, totaling 598.6 ac (242.2 ha) (see discussion of Unit 3, above, for more about forest plan objectives for the gopher frog).

Threats to the black pinesnake and its habitat in Unit 4 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 5: Howison—Stone and Harrison Counties, Mississippi*

Unit 5 encompasses approximately 12,949 ac (5,240 ha) on Federal, local, and private land in Harrison and Stone Counties, Mississippi. This unit is located between Tuxachanie Creek and U.S. Highway 49, approximately 0.4 mi (0.6 km) east of Howison and 1.3 mi (2 km) southeast of McHenry, and this unit is mostly within the boundary of the De Soto Ranger District of the DNF. The unit is bordered on the northern edge by E. McHenry Road and on the western edge by U.S. Highway 49 (buffered from the highway by at least 328 ft (100 m)).

The majority of this unit (9,371 ac (3,792 ha)) is on Federal lands within the DNF, with the remainder of the unit on local (640 ac (259 ha)) and private (2,938 ac (1,189 ha)) lands. Unit 5 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of seven black pinesnakes located within Unit 5 since 1990. Many of these are located on the

higher ridges within the unit boundary, but are within close enough proximity of each other (with contiguous habitat between) for all of them to belong to the same breeding population. Habitat management on the section of this unit owned by the U.S. Forest Service is performed under the Revised Land and Resource Management Plan for National Forests in Mississippi (U.S. Forest Service 2014, 207 pp.). This forest plan contains objectives for the threatened gopher tortoise, which occurs on Unit 5 (see discussion for Unit 4, above).

Threats to the black pinesnake and its habitat in Unit 5 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 6: Marion County WMA—Marion County, Mississippi*

Unit 6 encompasses approximately 11,857 ac (4,798 ha) on State and private land in Marion County, Mississippi. This unit is located between the Upper Little Creek and Lower Little Creek, 7.0 mi (11 km) southeast of Columbia. It is located 0.8 mi (1.3 km) north of State Highway 13, and 2.6 mi (4.2 km) south of U.S. Highway 98. Approximately half of Unit 6 is within the Marion County WMA.

The unit is divided between State lands (5,587 ac (2,261 ha)) and private lands (6,270 ac (2,537 ha)). Unit 6 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of two black pinesnakes located within Unit 6 since 1990. These are both located on the WMA, although there is contiguous suitable habitat across the remainder of the unit. Regulations on the WMA include prohibitions of wildlife harassment; however, there are no habitat management activities occurring at the WMA that specifically target the habitat requirements of the black pinesnake.

Threats to the black pinesnake and its habitat in Unit 6 that may require special management considerations or protection of the physical or biological features include: Fire suppression and

low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 7: Scotch WMA—Clarke County, Alabama*

Unit 7 encompasses approximately 33,395 ac (13,514 ha) of private land in Clarke County, Alabama. This unit is bordered by Salitpa Creek to the south, Tallahatta Creek to the north, and Harris Creek to the west. It is located approximately 2.7 mi (4.3 km) southeast of Campbell, and approximately half of the unit is on the Scotch WMA. Unit 7 is located 1.1 mi (1.8 km) north of the intersection of Old Mill Pond Road and Reedy Branch Road.

This unit contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of four black pinesnakes located within Unit 7 since 1990. Many of these are located on the higher ridges within the unit boundary, but are within close enough proximity to each other (with contiguous habitat between) for all of them to belong to the same breeding population. Most of this unit is managed by Scotch Land Management, LLC; however, there are no management practices on this unit that specifically target the habitat requirements of the black pinesnake.

Threats to the black pinesnake and its habitat in Unit 7 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

*Unit 8: Fred T. Stimpson WMA—Clarke County, Alabama*

Unit 8 encompasses approximately 5,661 ac (2,291 ha) on State and private land in Clarke County, Alabama. This unit is located between Sand Hill Creek and the Tombigbee River, is approximately 2.5 mi (4 km) north of

Carlton, and is 1.0 mi (1.6 km) south of the intersection of County Road 15 and Christian Vall Road. The southern half of this unit is on the Fred T. Stimpson WMA.

Approximately half of the unit (2,547 ac (1,031 ha)) is on State lands, with the remainder of the unit (3,114 ac (1,260 ha)) on private land. Unit 8 contains all elements of the physical or biological features of the black pinesnake to support life-history functions essential to the conservation of the subspecies.

There are records of two black pinesnakes located within Unit 8 since 1990. These are both located on the WMA, although there is contiguous suitable habitat across the remainder of the unit. There are no habitat management practices outlined at the site that specifically target the habitat requirements of the black pinesnake.

Threats to the black pinesnake and its habitat in Unit 8 that may require special management considerations or protection of the physical or biological features include: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy belowground soil structures such as clear-cutting, disking, or stump removal; land use conversion and fragmentation, primarily urban development, new roads, and conversion to agriculture and pine plantations; gas, water, electrical power, and sewer easements; road mortality; and encroachment of invasive species.

### Effects of Critical Habitat Designation

#### Section 7 Consultation

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

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when

analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

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

#### Application of the “Adverse Modification” Standard

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

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

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the black pinesnake. These activities include, but are not limited to:

(1) Forestry management actions in pine habitat that would significantly alter the suitability of black pinesnake habitat. Such activities could include,

but are not limited to: Silvicultural activities such as disking, bedding, and clear-cutting that involve ground disturbance; conversion to densely stocked pine plantations; and chemical applications (pesticides or herbicides) that are either unlawful or that are not directly aimed at hazardous fuels reduction, mid-story hardwood control, or noxious weed control. These activities could destroy or alter the pine forest habitats and refugia necessary for the growth and development of black pinesnakes, and may reduce populations of the snake's primary prey (rodents), either through direct extermination or through loss of the forage necessary to sustain the prey base.

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

### Exemptions

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

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

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland

protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

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 geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an Integrated Natural Resources Management Plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed one INRMP developed by military installations located within the range of the proposed critical habitat designation for the black pinesnake to determine if it met the criteria for exemption from critical habitat under section 4(a)(3) of the Act.

#### *Approved INRMP*

Camp Shelby Joint Forces Training Center (Camp Shelby), 5,735 ac (2,321 ha)

Camp Shelby is located in Forrest, George, and Perry Counties, near the town of Hattiesburg, Mississippi, and contains habitat with features essential to the conservation of the black pinesnake. The primary mission of Camp Shelby is to train U.S. Army soldiers (National Guard and Reserve) for combat and combat-related missions. Training activities at Camp Shelby primarily include troop bivouacking, wheeled vehicle maneuvers, artillery firing exercises, and tank training maneuvers.

Camp Shelby is composed of property belonging in four different categories: Department of Defense (DoD), State, United States Forest Service (USFS), and private land. The main part of Camp Shelby's training area belongs to the USFS and is operated under a special use permit from the USFS granted in 2007 for 20 years (see discussion under *Exclusions Based on National Security Impacts*, below). The DoD and State lands are managed by the Mississippi Army National Guard (MSARNG) in support of the military mission, and the Camp Shelby INRMP addresses integrative management on these lands only (MSARNG 2014, p. 13). These DoD and State lands, included in the INRMP, with habitat features essential to the conservation of the black pinesnake, total approximately 5,558 ac

(2,249 ha). We have examined the INRMP and determined that it does outline conservation measures for the black pinesnake, as well as management plans for important upland habitats at Camp Shelby. Conservation measures outlined in the INRMP for the black pine snake at Camp Shelby include: Research on life history, habitat requirements, and habitat use; monitoring; prescribed burning and longleaf pine restoration programs, including increasing the frequency of growing season burns, reducing canopy closure and basal area, and restoring the natural fire regime; protecting and maintaining downed deadwood and pine stumps (when not identified as a safety hazard); and implementation of education programs for users of Camp Shelby (geared towards minimizing the negative impacts of vehicular mortality on the black pine snake and other species) (MSARNG 2014, pp. 92–94). The INRMP will continue to be reviewed annually to monitor the effectiveness of the plan, and be reviewed every 5 years to develop revisions and updates as necessary.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Camp Shelby INRMP and that conservation efforts identified in the INRMP will provide a benefit to the black pinesnake. Therefore, DoD and State lands within this installation, which are covered under the INRMP, are exempt from critical habitat designation under section 4(a)(3) of the Act. We are not including approximately 5,558 ac (2,249 ha) of habitat in this proposed critical habitat designation because of this exemption.

### Exclusions

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, 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.

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

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the black pinesnake, the benefits of critical habitat include public awareness of the presence of the black pinesnake and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the black pinesnake due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

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

Based on the information we receive during the public comment period, we will evaluate whether certain lands in the proposed critical habitat in a portion of Unit 3 are appropriate for exclusion from the final designation under section 4(b)(2) of the Act (see discussion under *Exclusions Based on National Security Impacts*, below). If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period.

#### *Exclusion Based on 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). The baseline, therefore, 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 an optional section 4(b)(2) exclusion analysis.

For this 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 black pinesnake (IEc 2014). The screening analysis focuses on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the subspecies. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are therefore, unlikely to incur incremental economic impacts. 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 screening analysis also assesses whether units are unoccupied by the subspecies and may require additional management or conservation efforts as a result of the critical habitat designation for the subspecies which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis (DEA) of the proposed critical habitat designation for the black pinesnake and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation, if adopted as proposed. In our evaluation

of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the black pinesnake, first we identified, in the IEM dated May 2, 2014, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (U.S. Forest Service); (2) forest management; (3) agriculture; (4) development; (5) silviculture/timber; (6) transportation activities; and (7) utilities. We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation would not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the black pinesnake is present, if we finalize the listing of the subspecies, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the subspecies. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into that consultation process. Therefore, disproportionate impacts to any geographic area or sector would not be likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that would result from the subspecies being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the black pinesnake's critical habitat. Because we are proposing the designation of critical habitat for black pinesnake before finalizing (if appropriate) the subspecies' listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential PBFs identified for critical habitat are the same features essential for the life requisites of the subspecies, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the black pinesnake would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited

distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this subspecies. 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 black pinesnake consists of eight units, one of which is divided into two subunits, encompassing approximately 338,100 ac (136,824 ha) in Mississippi and Alabama. Included lands are under Federal, State, local, and private ownership, and all are within the area occupied by the black pinesnake at the time of listing. Federal land is predominant in Units 1 through 5. In these units, Federal lands make up from 58 to 90 percent of the acreage, which accounts for approximately 70 percent of the total proposed critical habitat acreage. Privately owned land is present in all eight units and ranges from 8 percent to a high of 100 percent in one unit. Private lands account for approximately 27 percent of the total proposed critical habitat acreage. Approximately 4,647 ac (1,880 ha) of the proposed designation in one unit have been identified for potential exclusion under section 4(b)(2) of the Act due to a national security concern (see *Exclusions Based on National Security Impacts*, below).

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

The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect will be subject to consultations that may involve private entities as third parties are residential and commercial

development that may occur on private lands; however, cost to private entities within these sectors is expected to be minor as most of the proposed critical habitat is in Federal ownership (70 percent) and only 27 percent of the lands are privately owned. According to a review of consultation records, the additional administrative cost of addressing adverse modification during the section 7 consultation process ranges from approximately \$410 to \$9,000 per consultation. Based on the project activity identified by relevant action agencies and comparison to the consultation history for species that co-occur or share habitat with the black pinesnake, the number of future formal consultations is likely to be five or fewer in the year immediately following the final designation. In addition, up to 60 informal consultations and five technical assists could occur annually following the designation. Thus, the incremental administrative burden resulting from the designation is likely to be less than \$190,000 in this first year, the year with the highest anticipated costs; therefore, the costs would not be significant.

In summary, the probable incremental economic impacts of the black pinesnake critical habitat designation are expected to be limited to additional administrative efforts as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This finding is based on the following factors: (1) All proposed critical habitat is occupied by the subspecies; thus, the presence of the subspecies, once it is listed, would result in significant baseline protection under the Act; (2) project modifications requested by the Service to avoid jeopardy to the subspecies would be the same as those likely to avoid adverse modification of critical habitat; (3) critical habitat would be unlikely to increase the number of consultations as a result of the awareness by Federal agencies of the need to consult if the subspecies is listed, as well as the past involvement of key action agencies in consultations for co-occurring species; (4) the proposed designation also receives baseline protection from the presence of two federally-listed species (gopher tortoise and red-cockaded woodpecker) that have habitat needs similar to those of the pinesnake; and (5) the proposed designation also receives baseline protection from overlap with designated critical habitat for the dusky gopher frog.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of this proposed rule. We may revise the



proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, 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 that the exclusion will not result in the extinction of the species.

#### *Exclusions Based on National Security Impacts*

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. This portion of the Act allows the Secretary to exercise her discretion to exclude areas from critical habitat for reasons of national security if she determines the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species.

#### Camp Shelby Joint Forces Training Center Impact Area

After considering the Camp Shelby Joint Forces Training Center Impact Area occupying a portion (4,647 ac (1,880 ha)) of Unit 3 in Perry County, Mississippi, under section 4(b)(2) of the Act, we are considering excluding it from the critical habitat designation for the black pinesnake.

However, we specifically solicit comments on the inclusion or exclusion of this area. In the paragraphs below, we provide a detailed analysis of our consideration to exclude this land under section 4(b)(2) of the Act.

The Impact Area of Camp Shelby Joint Forces Training Center (Camp Shelby) is a 4,647–ac (1,880–ha) area operated by the MSARNG for training and maneuver exercises in an area of the De Soto National Forest within Unit 3 located in Perry County, Mississippi. The MSARNG utilizes this area under a special use permit from the U.S. Forest Service, who is the primary landowner and manager within the installation boundary. The Impact Area, which is located in the center of Camp Shelby and in the northern portion of Unit 3, has been utilized for artillery training for decades. As a result, access of any kind is prohibited in this impact area due to the high risk of encountering unexploded ordnance. None of the acreage within the Impact Area is covered under the Camp Shelby INRMP; thus, none of this acreage was considered for exemption under section 4(a)(3) of the Act (see *Approved INRMP* under the Exemptions section, above).

#### Benefits of Inclusion: Camp Shelby Impact Area

We are not able to demonstrate any benefit to including this area in the critical habitat designation for the black pinesnake. Access into this area is prohibited for human safety. The educational benefit associated with identifying specific areas as critical habitat as a means to provide public with notice of areas of potential conservation value is realized in that this area is embedded in currently proposed critical habitat. Furthermore, because access into this area is prohibited, there are likely no habitat-altering activities taking place in this area at the scale that would affect the physical and biological features essential to the conservation of this subspecies. To the contrary, due to the nature of use of this area, this area experiences frequent fires, a natural component of the longleaf pine ecosystem that promotes optimal forest conditions for the black pinesnake.

#### Benefits of Exclusion: Camp Shelby Impact Area

The benefits of excluding approximately 4,647 ac (1,880 ha) of U.S. Forest Service lands that encompasses the Impact Area of Camp Shelby (which the Mississippi Army National Guard uses for training purposes) are significant. Foremost, as a human safety issue, access of any kind is prohibited into this area due to the high risk of encountering unexploded ordnance; thus, there is no opportunity to implement management. However, as stated above, the area experiences frequent fires due to the nature of its use, which is the preferred management technique for maintaining optimal habitat conditions for the black pinesnake. In addition, the black pinesnake receives secondary conservation benefits from management of adjacent lands for the threatened gopher tortoise. Lands within the Impact Area of Camp Shelby are used for artillery training that provides soldiers with essential combat skills that they use on the battlefield. We believe that excluding these U.S. Forest Service lands from critical habitat designation would remove the potential impact that a designation of critical habitat could have on MSARNG and the military's ability to maintain national security.

#### Benefits of Exclusion Outweigh the Benefits of Inclusion: Camp Shelby Impact Area

Though access to the Camp Shelby Impact Area is prohibited, an analysis of GIS and aerial imagery determined that

the Impact Area (4,647 ac (1,880 ha)) of the Camp Shelby Joint Forces Training Center contains the physical and biological features essential to the conservation of the black pinesnake, thereby meeting the definition of critical habitat under the Act. This area is also contiguous with other proposed critical habitat with known occurrences for the black pinesnake. In making our recommendation to exclude the Camp Shelby Impact area, we considered several factors: Prohibited access due to a human safety issue; the apparent maintenance of physical and biological factors essential to the conservation of the subspecies from frequent burning due to the nature of use of the area; protection from habitat loss associated with land conversion; and potential impacts to national security associated with a critical habitat designation. We believe there are significant benefits to excluding these lands from critical habitat designation and are unable to demonstrate a benefit to including these lands in the designation. Access is prohibited into the area; thus, there is no opportunity for surveying, monitoring, or management. Therefore, we have preliminarily determined that the benefits of exclusion of approximately 4,647 ac (1,880 ha) of the Impact Area of Camp Shelby from the critical habitat designation outweigh the benefits of including these lands.

#### Exclusion Will Not Result in Extinction of the Subspecies: Camp Shelby Impact Area

The exclusion of this small portion (4,647 ac (1,880 ha)) from the total proposed critical habitat designation in Unit 3 (145,143 ac (58,737 ha)) will have minimal to no adverse effect on the subspecies. Adjacent lands contain habitat for the black pinesnake and are part of proposed designation. Maintenance of appropriate habitat for the black pinesnake with frequent fires is likely to continue in this area due to the use of this area for artillery training. The jeopardy standard of section 7 of the Act and routine implementation of conservation measures through the section 7 process on lands provide additional assurances that the subspecies will not become extinct as a result of this exclusion. Thus, it is our assessment that the exclusion of the Camp Shelby Impact Area lands from the final designation of critical habitat for the black pinesnake will not result in the extinction of the subspecies.

Based on this analysis, under section 4(b)(2) of the Act, the Secretary is considering exercising her discretion to exclude the Camp Shelby Impact Area within Unit 3 from the final critical

habitat designation as a result of impacts to national security.

#### *Exclusions Based on Other Relevant Impacts*

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

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for the black pinesnake, and the proposed designation does not include any tribal lands or trust resources. Therefore, we anticipate no impact on tribal lands or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not plan to exercise her discretion to exclude any areas from the final designation based on other relevant impacts.

#### **Peer Review**

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data and analyses. We will invite these peer reviewers to comment during this public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

#### **Public Hearings**

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain

reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### **Required Determinations**

##### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

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

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

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and

town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if 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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required 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 by the agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities, and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, 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 promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis of areas included in this proposal, we do not expect that the designation of critical habitat as proposed 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. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

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

Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

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

(2) We do not believe that this rule would significantly or uniquely affect small governments because the black pinesnake occurs primarily on Federal and privately owned lands. None of these government entities fit the definition of “small governmental jurisdiction.” Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating critical habitat for the black pinesnake in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat the black pinesnake would not pose significant takings implications. However, we will further evaluate this issue as we develop our

final designation, and review and revise this assessment as warranted.

*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 in Alabama, Louisiana, and Mississippi. 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 rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the PBFs of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

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

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2)

of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the black pinesnake, this proposed rule identifies the elements of PBF's essential to the conservation of the subspecies. The proposed critical habitat units are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

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

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

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

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

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly

with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We have determined that there are no tribal lands that are occupied by the black pinesnake at the time of listing that contain the features essential for conservation of the subspecies, and no tribal lands unoccupied by the black pinesnake that are essential for the conservation of the subspecies. Therefore, we are not proposing to designate critical habitat for the black pinesnake on tribal lands.

*Clarity of the Rule*

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

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

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. 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.

**References Cited**

A complete list of references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2014-0065 and upon request from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Mississippi Field Office.

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

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

**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; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245, unless otherwise noted.

- 2. In § 17.95, amend paragraph (c) by adding an entry for “Black Pinesnake (*Pituophis melanoleucus lodingi*);” in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

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

\* \* \* \* \*  
(c) *Reptiles.*  
\* \* \* \* \*

Black Pinesnake (*Pituophis melanoleucus lodingi*)

(1) Critical habitat units are depicted for Forrest, George, Greene, Harrison, Jones, Marion, Perry, Stone, and Wayne Counties, Mississippi, and Clarke County, Alabama, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the black pinesnake consist of three components:

(i) *Tract size and habitat structure.* A longleaf pine-dominated forest maintained by frequent fire, and primarily having the following characteristics:

- (A) Open canopy ( $\leq 70$  percent);
- (B) Reduced woody mid-story ( $< 10$  percent cover);
- (C) Abundant, diverse, native groundcover (at least 40 percent cover); and

(D) Minimum of 5,000 acres (2,023 hectares) of mostly unfragmented habitat.

(ii) *Refugia sites and topographic features.* Naturally burned-out or rotted-out pine stumps and their associated root systems, in longleaf pine forests on ridges with elevation of 150 feet (46 meters) or greater.

(iii) *Soils.* Deep, sandy, well-drained soils of longleaf pine forest, characterized by:

- (A) No flooding or ponding;
- (B)  $< 15$  percent medium and coarse gravel fragments;
- (C)  $> 60$  inches (152 centimeters) depth to seasonal high water table;
- (D)  $> 60$  inches (152 centimeters) depth to the hardpan;

(E) Textural components equaling  $> 30$  percent sand and  $< 35$  percent clay; and

- (F) A slope  $< 15$  percent.

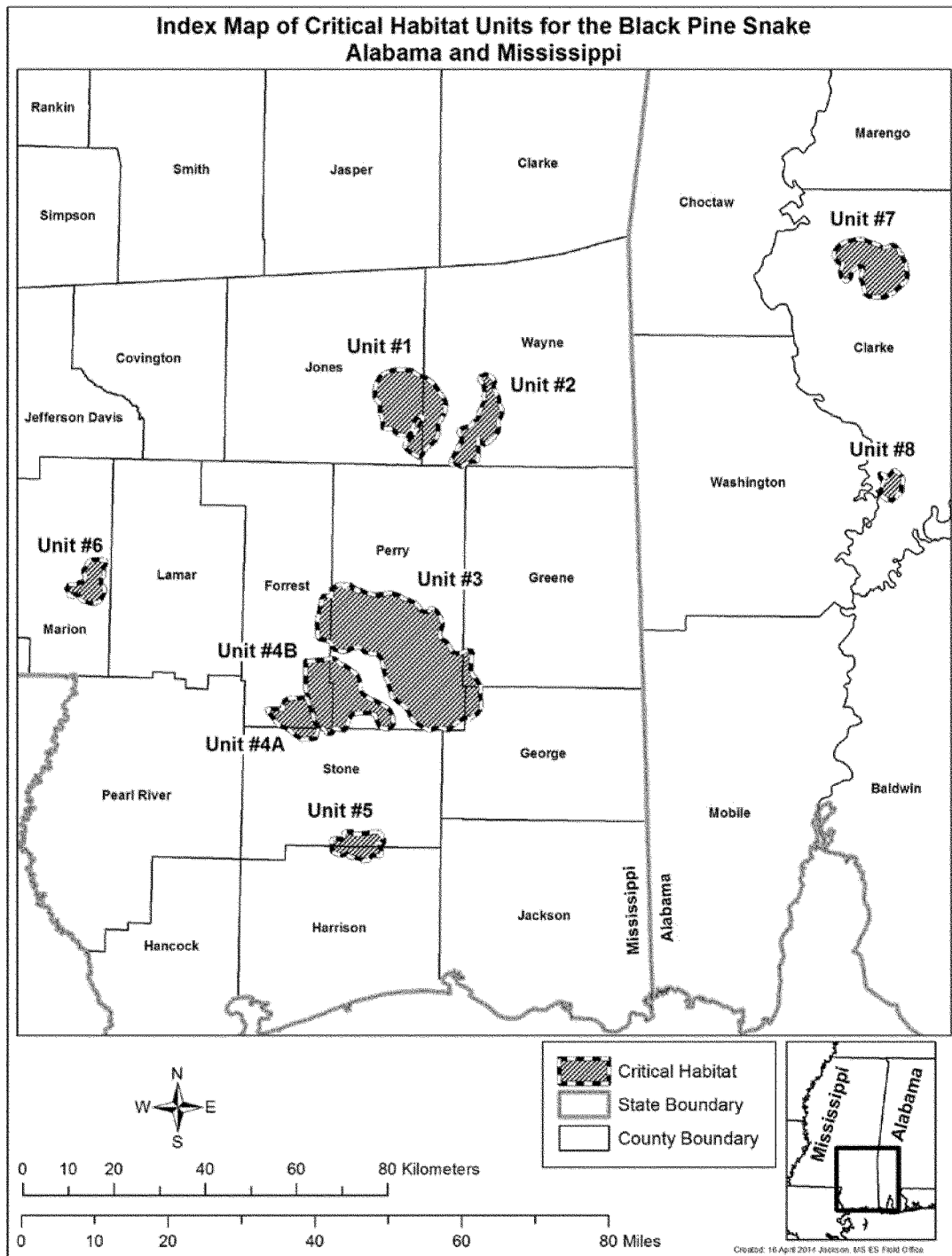
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule. In addition, State and Department of Defense lands, covered under the Camp Shelby INRMP, are also not considered critical habitat in Unit 3.

(4) *Critical habitat map units.* Data layers defining map units were developed from USGS 7.5' quadrangles, and critical habitat units were then using Universal Transverse Mercator (UTM) Zone 15N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is

based are available to the public at the Service's Internet site at <http://www.fws.gov/mississippiES/>, at <http://www.regulations.gov> at Docket No. FWS-R4-ES-2014-0065, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

BILLING CODE 4310-55-P

(5) NOTE: Index map follows:



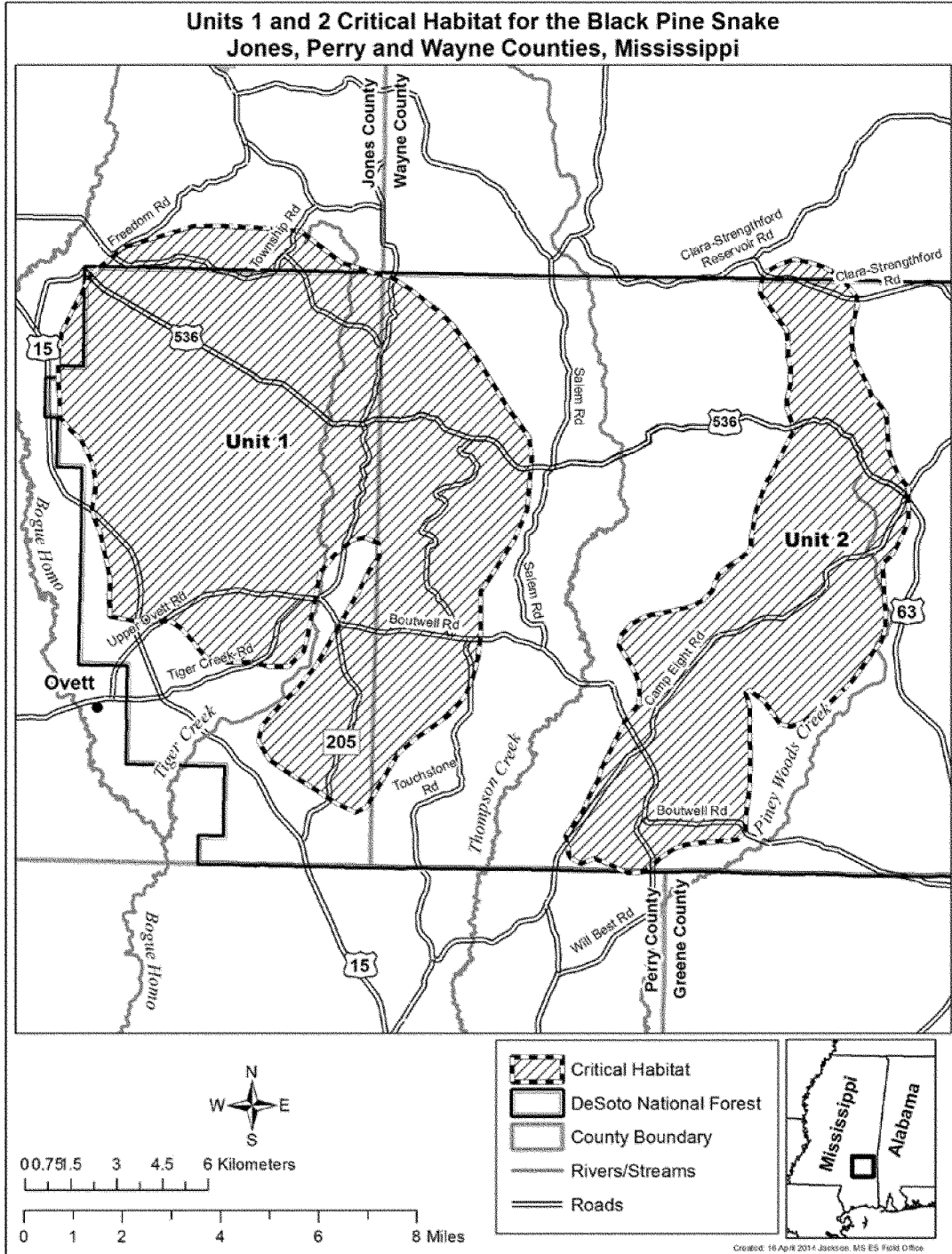
(6) Unit 1: Overtt—Jones and Wayne Counties, Mississippi.

(i) This unit is located between the Bogue Homo River and Thompson Creek, is approximately 2.0 mi (3.2 km) northeast of Overtt, and is mostly within

the boundary of the Chickasawhay Ranger District of the De Soto National Forest. It is located just east of State Highway 15, west of Salem Road, north of the intersection of State Highway 15 and County Road 205, and

approximately 1.3 mi (2.1 km) south of the intersection of Freedom Road and Forest Road.

(ii) Map of Units 1 (Ovett) and 2 (Piney Woods Creek) follows:



(7) Unit 2: Piney Woods Creek—Perry and Wayne Counties, Mississippi.

(i) This unit is located between Thompson Creek and Piney Woods Creek, is approximately 4.0 mi (6.4 km) west of Clara, and is mostly within the boundary of the Chickasawhay Ranger District of the De Soto National Forest. It is located 2.3 mi (3.7 km) north of the intersection of Camp Eight Road and Will Best Road, and 0.4 mi (0.6 km)

southeast of the intersection of Clara-Strengthford Road and Clara-Strengthford Reservoir Road.

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

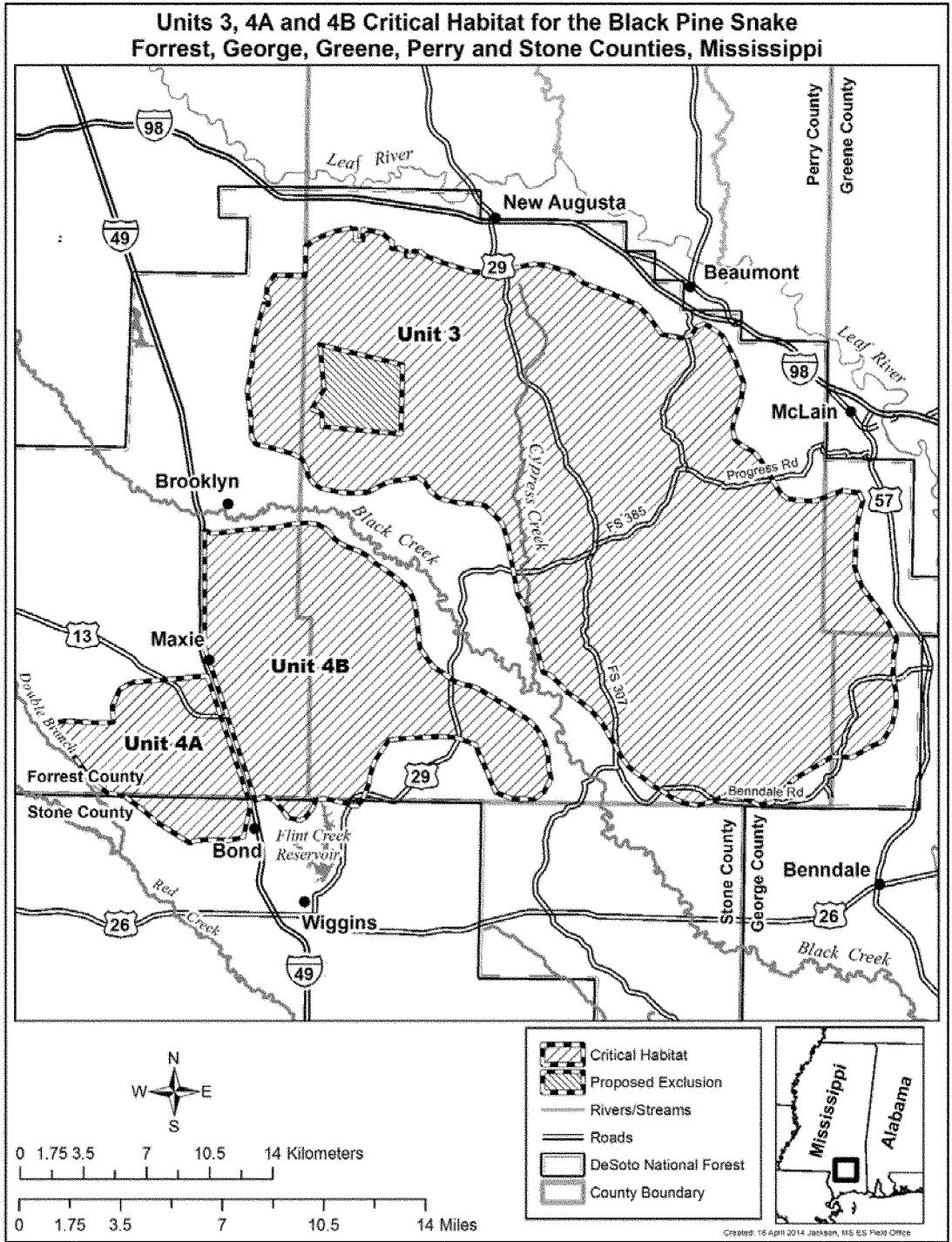
(8) Unit 3: Cypress Creek—Greene, George, Forrest, and Perry Counties, Mississippi.

(i) This unit is located north of Black Creek (Cypress Creek runs into part of

the unit, but is not a barrier to gene flow), and is approximately 3.0 mi (4.8 km) east of McLaurin, 1.8 mi (2.9 km) south of New Augusta, and 4.6 mi (7.4 km) northwest of Benndale. Unit 3 is mostly within the installation boundary of Camp Shelby on the De Soto Ranger District of the De Soto National Forest, and is bordered by State Highways 26 and 57 and U.S. Highways 49 and 98.



(ii) Map of Units 3 (Cypress Creek) and 4 (Maxie) follows:



(9) Unit 4: Maxie—Forrest, Perry, and Stone Counties, Mississippi.

(i) Subunit 4A—Forrest and Stone Counties, Mississippi. Subunit 4A is located between Double Branch and U.S. Highway 49 in Forrest and Stone Counties, Mississippi. It is 0.3 mi (4.8 km) northwest of Bond and 0.5 mi (0.8 km) southwest of Maxie, and is located mostly within the boundary of the De Soto Ranger District of the De Soto National Forest.

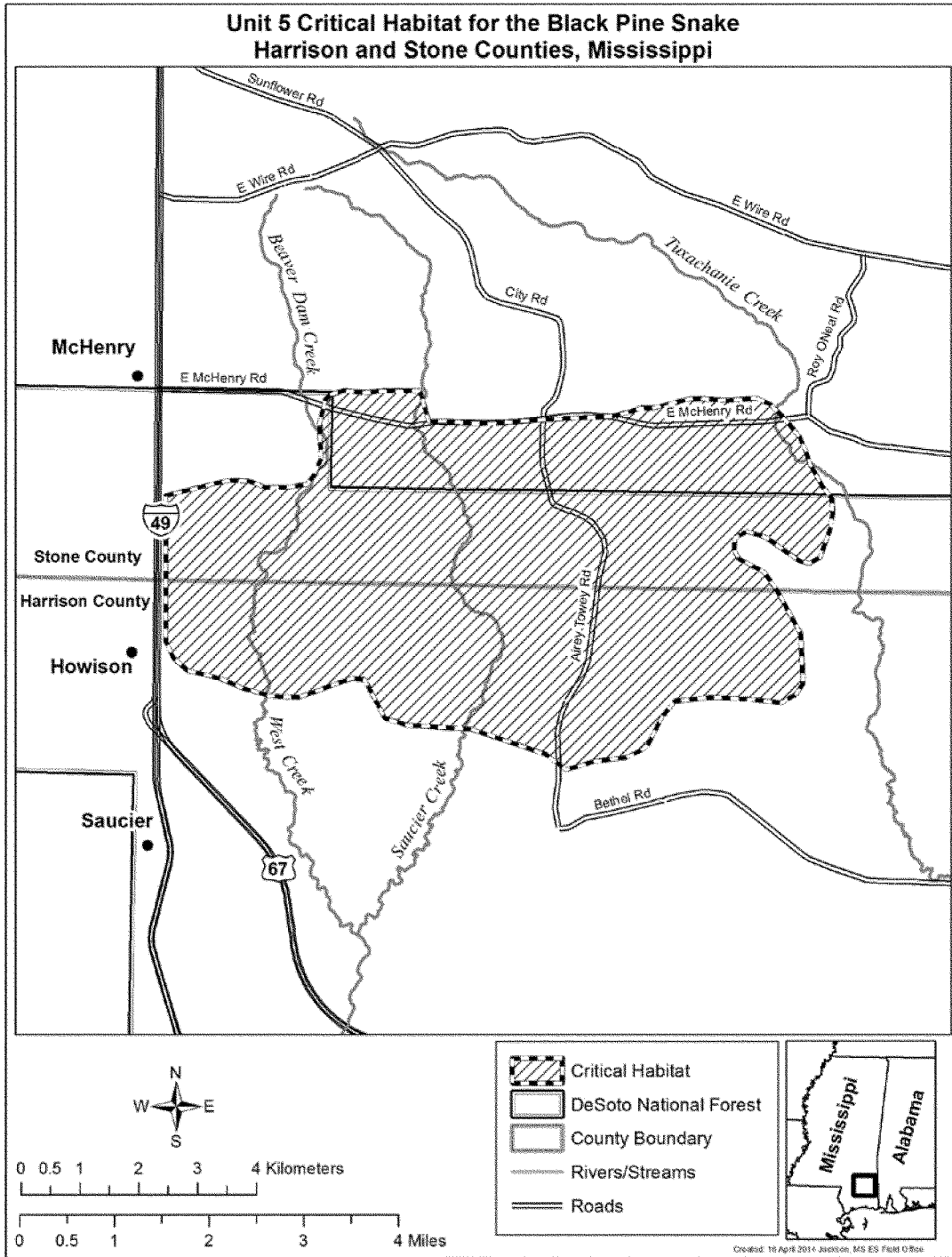
(ii) Subunit 4B—Forrest, Perry, and Stone Counties, Mississippi. Subunit 4B is located between Black Creek and U.S. Highway 49 in Forrest, Perry, and Stone Counties, Mississippi. It is directly adjacent to Maxie on the western border, and is located mostly within the boundary of the De Soto Ranger District of the De Soto National Forest.

(iii) Map of Unit 4 (Maxie) is provided at paragraph (8)(ii) of this entry.

(10) Unit 5: Howison—Harrison and Stone Counties, Mississippi.

(i) This unit is located between Tuxachanie Creek and U.S. Highway 49, approximately 0.4 mi (0.6 km) east of Howison and 1.3 mi (2 km) southeast of McHenry, and is mostly within the boundary of the De Soto Ranger District of the De Soto National Forest. The unit is bordered on the northern edge by E. McHenry Road and on the western edge by U.S. Highway 49 (buffered from the highway by at least 328 ft (100 m)).

(ii) Map of Unit 5 (Howison) follows:



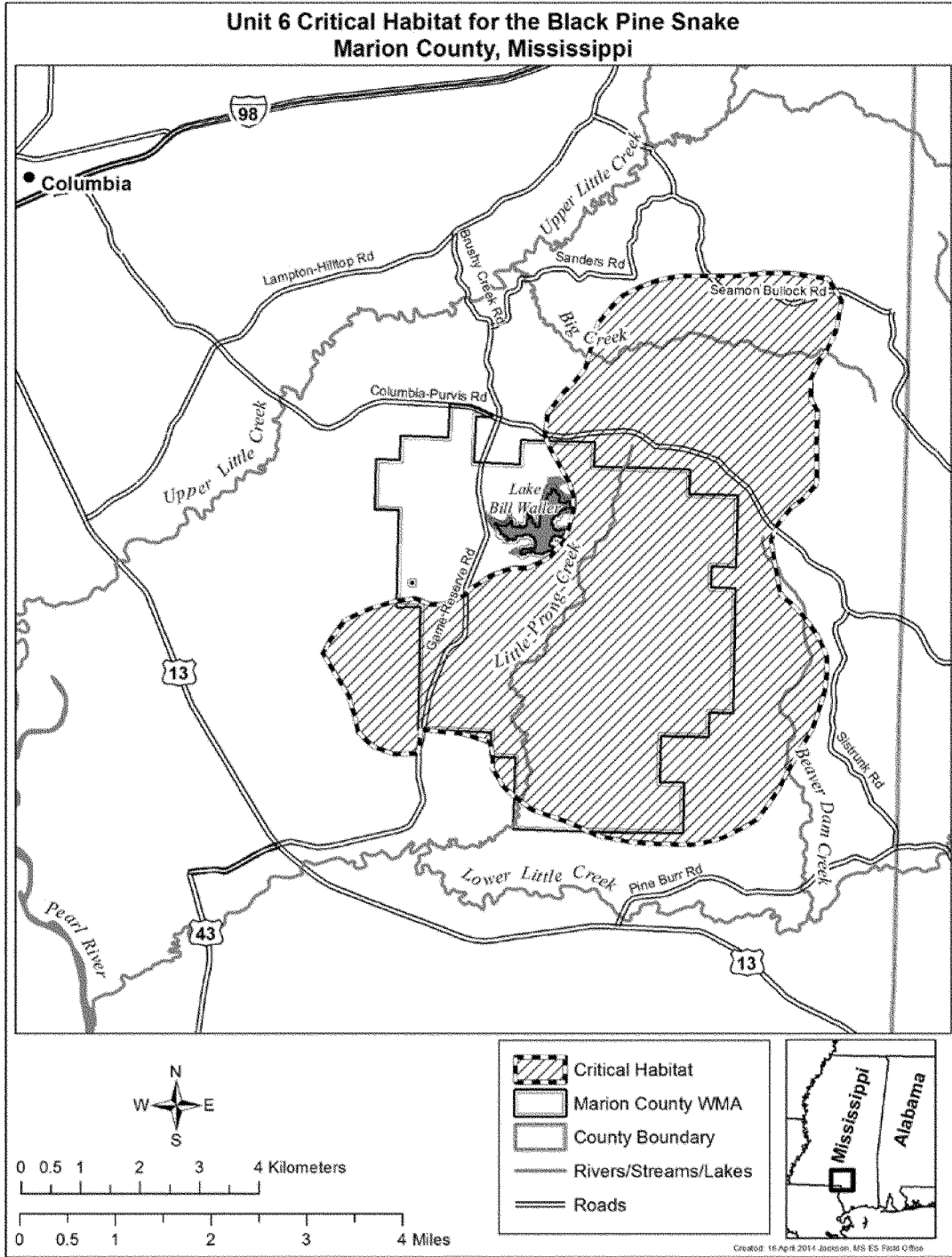
(11) Unit 6: Marion County WMA—Marion County, Mississippi.

(i) This unit is located between the Upper Little Creek and Lower Little

Creek, 7.0 mi (11 km) southeast of Columbia. It is located 0.8 mi (1.3 km) north of State Highway 13, and 2.6 mi (4.2 km) south of U.S. Highway 98.

Approximately half of Unit 6 is within the Marion County Wildlife Management Area (WMA).

(ii) Map of Unit 6 (Marion County WMA) follows:



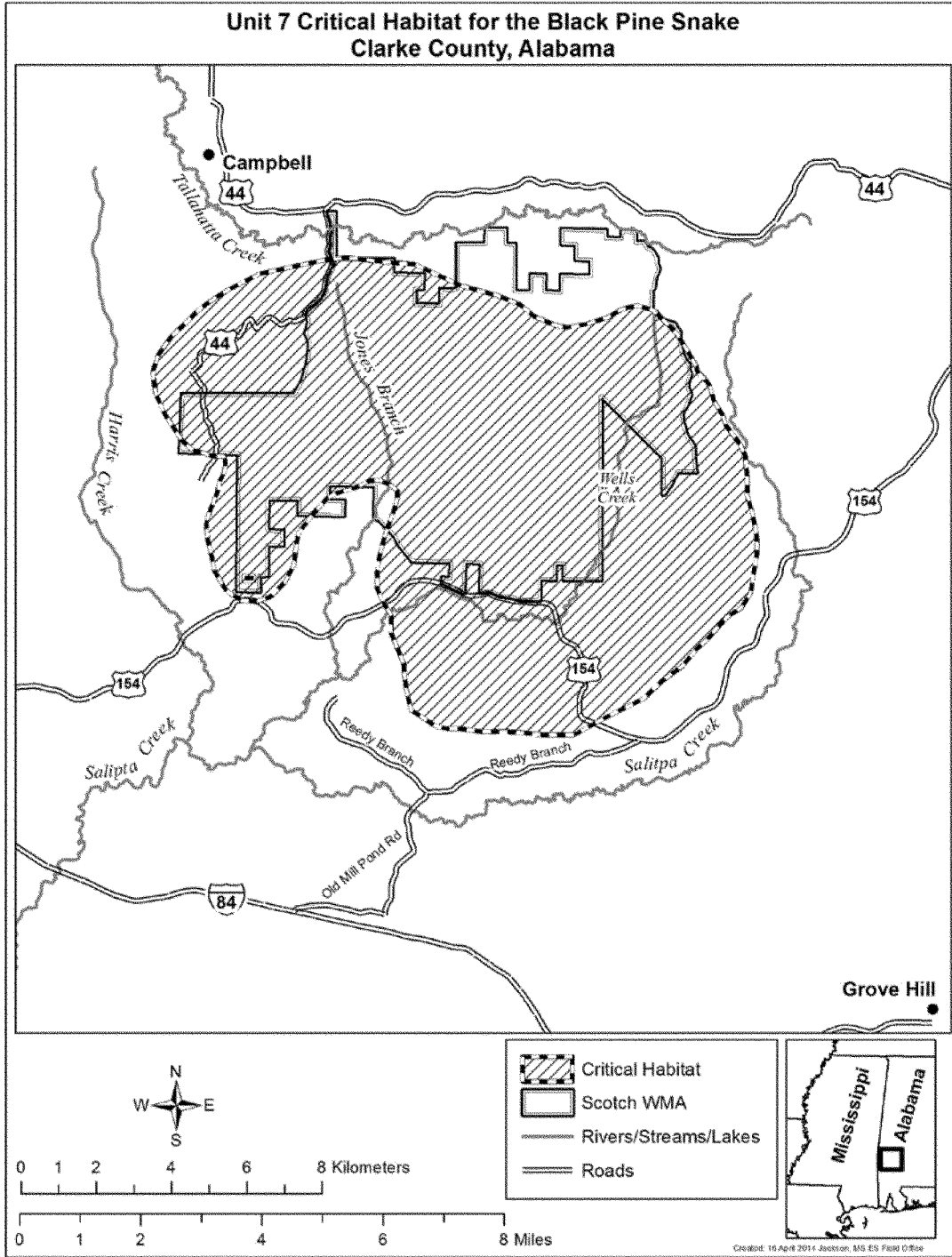
(12) Unit 7: Scotch WMA—Clarke County, Alabama.

(i) This unit is bordered by Salitpa Creek to the south, Tallahatta Creek to the north, and Harris Creek to the west.

It is located approximately 2.7 mi (4.3 km) southeast of Campbell, and approximately half of the unit is on the Scotch Wildlife Management Area (WMA). Unit 7 is located 1.1 mi (1.8

km) north of the intersection of Old Mill Pond Road and Reedy Branch Road.

(ii) Map of Unit 7 (Scotch WMA) follows:



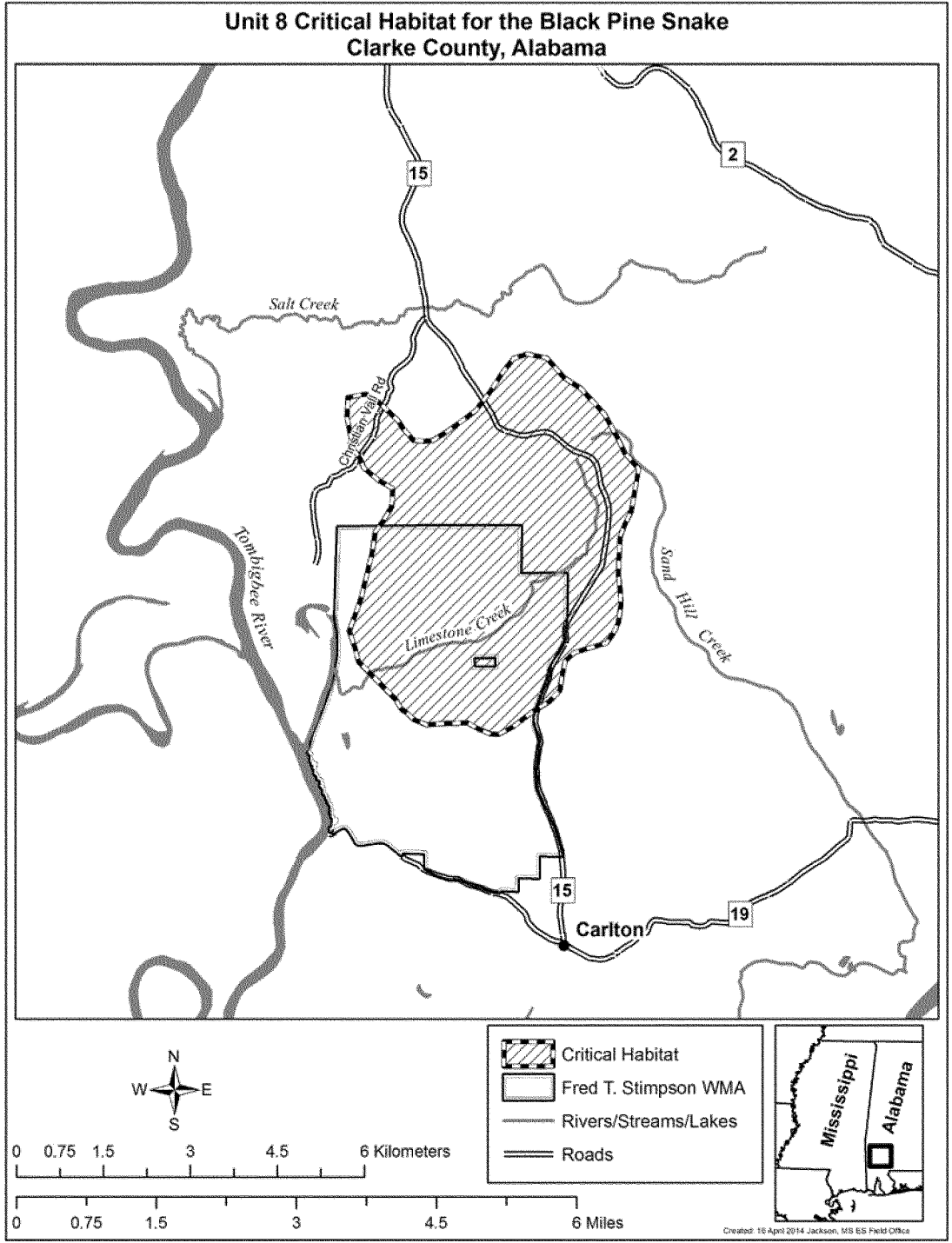
(13) Unit 8: Fred T. Stimpson WMA—Clarke County, Alabama.

(i) This unit is located between Sand Hill Creek and the Tombigbee River, is

approximately 2.5 mi (4 km) north of Carlton, and is 1.0 mi (1.6 km) south of the intersection of County Road 15 and Christian Vall Road. The southern half

of this unit is on the Fred T. Stimpson Wildlife Management Area (WMA).

(ii) Map of Unit 8 (Fred T. Stimpson WMA) follows:



\* \* \* \* \*

Dated: January 14, 2015.  
**Michael J. Bean,**  
*Principal Deputy Assistant Secretary for Fish  
 and Wildlife and Parks.*  
 [FR Doc. 2015-05326 Filed 3-10-15; 8:45 am]  
**BILLING CODE 4310-55-C**