DoD published proposed amendments to the ''Other Transactions'' regulations at 32 CFR part 3 on May 20, 2003 (68 FR 27497), to implement Section 822. This proposed DFARS rule provides the corresponding exemption from competition requirements for follow-on production contracts awarded under the authority of Section 822.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D023.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 206 as follows:

1. The authority citation for 48 CFR part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 206—COMPETITION REQUIREMENTS

2. Section 206.001 is amended by adding, after paragraph (b), a new paragraph (S–70) to read as follows:

206.001 Applicability.

* * * * *

(S–70) Also excepted from this part are follow-on production contracts for products developed pursuant to the ''other transactions'' authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 note, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(c)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI74

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Arabis perstellata* (Braun's Rock-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of document availability.

SUMMARY: We, the Fish and Wildlife Service (Service), determine that critical habitat is prudent and propose to designate critical habitat for the *Arabis perstellata* (Braun's rock-cress), an endangered species listed under the Endangered Species Act of 1973, as amended (Act). We propose 20 specific geographic areas (units) in Kentucky (17 units) and Tennessee (3 units) as critical habitat for *Arabis perstellata.* These units encompass approximately 408 hectares (ha) (1,008 acres (ac)). Kentucky has approximately 328 ha (810 ac) and Tennessee has approximately 80 ha (198 ac) proposed as critical habitat for *Arabis perstellata.*

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions with no Federal involvement are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We have conducted an analysis of the economic impacts of designating these areas as critical habitat and are announcing its availability for public review. That economic analysis has been conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS.*

DATES: We will consider comments received by August 4, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments to our Tennessee Field Office at the above address or fax your comments to 931/528–7075.

3. You may send comments by electronic mail (e-mail) to *timothy_merritt@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

FOR FURTHER INFORMATION CONTACT: Timothy Merritt at the above address (telephone 931/528–6481, extension 211; facsimile 931/528–7075).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule and its associated draft economic analysis. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section

4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the amount and distribution of *Arabis perstellata* and its habitat, and which habitat is essential to the conservation of this species and why;

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

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Arabis perstellata* such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs);

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(7) The inclusion into final critical habitat of the two recently identified populations of *Arabis perstellata,* and any foreseeable economic or other impacts resulting from including the areas encompassing these two new populations into designated critical habitat.

If you wish to comment on this proposed rule and/or the draft economic analysis, you may submit your comments and materials concerning this proposal and its associated draft economic analysis by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include ''Attn: Braun's rock-cress,'' your full name, and your return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Ecological Services Office in Cookeville, Tennessee (*see* **ADDRESSES**).

Copies of the proposed rule, draft economic analysis, and information regarding this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov.*

Background

Arabis perstellata (Braun's rock-cress) is a perennial herb of the mustard family (Brassicaceae). It was originally described by E. Lucy Braun (1940) from specimens collected between 1936 and 1939 in Franklin County, Kentucky. In 1956, Braun described the growth habits of *Arabis perstellata.* This species has round stems and alternate leaves. The stems and foliage have a grayish coloration due to the large quantity of hairs. The stems arise from horizontal bases and grow up to 80 centimeters (cm) (31.5 inches (in)) long, often drooping from rock ledges. Each year, a circular cluster of leaves radiating from the center is produced close to the ground, and new flowering branches emerge from the old cluster of the previous season. The lower leaves vary from 4 to 15 cm (1.6 to 6.0 in) long and are obovate (egg-shaped) to lanceolate (lance-shaped), with the broad end at the top. The lower leaves also have slightly toothed margins and are cut to the midrib. The upper leaves are smaller—up to 3.5 cm (1.4 in) long—and have relatively rounded ends that are widest at or about the middle, but then taper to a lance shape, with the broad end at the top. The upper leaves also have coarse teeth along their margins. Both surfaces of the leaves are covered in starlike hairs. The flowering section of the plant is elongated, with numerous stalked flowers. The flowers have four petals that are 3 to 4 millimeters (mm) (0.12 to 0.16 in) long, are white to lavender, and have four pale green sepals that are 2 to 3 mm (0.08 to 0.12 in) long. There are six stamens, with two shorter than the other four. The ovary is elongate and two-chambered, and develops into an elongated fruit, much longer than it is broad. Fruiting stalks are about 1 cm (0.4 in) long at maturity; the fruits are up to 4 cm (1.6 in) long and are covered with both simple and starlike hairs. Flowering occurs from late March to early May. Fruits mature from mid-May to early June. The oblong seeds are reddish brown, somewhat flattened, about 1 mm (0.04 in) long, and in places minutely hairy (Jones 1991). Plants are reported to live up to 5 years (Jones 1991).

Although varieties of this species are not recognized in recent taxonomic treatments (Rollins 1993), in the past, two varieties were distinguished based on size and degree of pubescence (Rollins 1960). The formerly recognized varieties are also geographically separated, with the larger variety (*Arabis perstellata* var. *ampla*) occurring in Tennessee and the smaller variety (*Arabis perstellata* var. *perstellata*) occurring in Kentucky (Rollins 1993; Kentucky State Nature Preserves Commission (KSNPC) 1996a). While the final rule for the determination of endangered status for this species recognized the two varieties, these two varieties are no longer recognized by the scientific community. Consequently, we will treat the plants that occur in both geographically separated areas as one species (*Arabis perstellata*) for the purpose of designating critical habitat.

Arabis perstellata is presently known from 41 populations in two separate sections of the Interior Low Plateaus Physiographic Province—the Blue Grass Section (Kentucky) and the Central Basin Section (Tennessee). Both areas where this species is found are predominantly underlain by sediments of Ordovician age (510–438 million years ago) (Quarterman and Powell 1978). The Kentucky populations occur in Franklin, Henry, and Owen Counties along the Kentucky River and its tributaries (primarily Elkhorn Creek). The Tennessee populations occur in Davidson and Rutherford counties, principally along the Stones River, but also along the Cumberland River several miles downstream of the Stones River confluence.

Arabis perstellata occurs on slopes composed of calcium carbonate, calcium, or limestone in moderately moist to almost dry forests. The occurrence of this species does not appear to be limited to a particular slope, aspect, elevation, or moisture regime within the slope forests. The plants survive in full shade or filtered light, but are not found in full sunlight (Jones 1991). The largest and most vigorous populations occur on moist mid- to upper-slope sites. Plants are often found around rock outcrops, in protected sites on the downslope side of

tree bases, and in sites of natural disturbance with little competition, such as a sloping mass of rock debris at the base of a cliff or on animal trails. The plants have a well-developed system of rootstocks that allow them to persist in these inhospitable sites. Sometimes the plants display a weedy tendency, colonizing recent road cuts or animal paths through the woodlands. The plants are rarely found growing among the leaf litter and herbaceous cover of the forest floor.

Within the Bluegrass Section of the Interior Low Plateaus in Kentucky, the Lexington Limestone Formation is common on the slopes entrenched by the Kentucky River and its major drainages (McDowell 1986). All but one of the Kentucky populations of *Arabis perstellata* are found on the Grier and Tanglewood members (laterally continuous distinct layers within a rock formation) of this formation. The exception is the population in Henry County, Kentucky, occurring on what is mapped as Kope and Clays Ferry members that have a higher shale component (Service 1997). However, the plants actually occur on limestone outcrops at this site similar to those occupied by the populations found in the Grier and Tanglewood members.

In Tennessee, *Arabis perstellata* sites are restricted to the Central Basin Section, which, like the Blue Grass Section, is underlain by Ordovician limestones. The primary rocks of the *Arabis perstellata* populations in Davidson County are Lebanon and Carters Limestone, while the sites in Rutherford County are characterized by Leipers and Catheys Limestone, as well as Bigby-Cannon Limestone (Wilson 1965, 1966a, 1966b).

The soils at *Arabis perstellata* sites are limestone-derived, with a rock outcrop component usually present in the soil complex. A clay subsoil is also common, but a notable difference is the acidity of the Tennessee soils (True *et al.* 1977) compared with the neutral to moderately alkaline Kentucky soils (Jones 1991; McDonald *et al.* 1985). The soils at the Tennessee sites are Mimosa-Rock outcrop complexes (True *et al.* 1977). The Kentucky sites contain Fairmont-Rock outcrop complexes and Eden flaggy silty clay (McDonald *et al.* 1985). The majority of the *Arabis* populations in Kentucky occur on Fairmont soils.

Common canopy trees of the slope forests where *Arabis perstellata* occurs are *Acer saccharum* (sugar maple), *Quercus muhlenbergii* (chinquapin oak), *Celtus occidentalis* (hackberry), and *Aesculus glabra* (Ohio buckeye). Jones (1991) listed the native herbaceous species that are most indicative of *Arabis perstellata* habitat as *Saxifraga virginiensis* (early saxifrage), *Sedum pulchellum* (stonecrop), *Arabis laevigate* (smooth rock-cress), *Draba ramosissima* (branched whitlowgrass), *Phacelia bipinnatifida* (forest phacelia), *Asplenium rhizophyllum* (walking fern), *Pellaea atropurpurea* (purple cliff-brake), and *Heuchera* sp. (alum root). These herbaceous species are all common forest forbs (flowering plants) in Kentucky and Tennessee, with the exception of *Draba ramosissima*, which is rare in Tennessee.

The only nonnative species which appears to be an important part of the *Arabis perstellata* plant community is *Alliaria petiolata* (European garlic mustard). Disturbed forests are most susceptible to rapid *Alliaria petiolata* invasion, and disrupted soil is most suitable for its establishment (Nuzzo 1991). This species competes directly with *Arabis perstellata* for areas of natural disturbance once it has become established in a forest. Management schemes for the control of *Alliaria petiolata* are being tested, but the species continues to spread into natural areas. This species poses a severe threat to *Arabis perstellata.*

Arabis perstellata is never a common component of the ground flora. It usually occurs in small groups (especially around rock outcrops) or as scattered individuals. The small size of the populations, the species' specialized habitat, and its apparent inability to expand into available or similar habitats suggests that it is a poor competitor. This inability to compete has likely limited its distribution and abundance. This species cannot withstand vigorous competition from invasive weeds or even native herbaceous species.

This species is most likely pollinated by insects, but we do not know nor do we know whether *Arabis perstellata* is self-fertile. Jones (1991) assumed that the plants are pollinated by insects, most likely by small flies and bees. Seed dispersal is likely occurring through wind or gravity rather than animal movements, as this species has no specific morphological (structural) mechanisms such as hooks or burs for seed dispersal. Seeds are probably most commonly dispersed downslope. Jones (1991) suggested that plants in the stable upper slopes (usually among the rock outcropping at a slope break) may be supplying seeds to chronically eroded areas below.

Arabis perstellata produces viable seeds, and plants can easily be grown from seeds under greenhouse conditions (Service 1997). It is not known whether the plant depends on a seed bank (seeds in the soil from previous seasons) to take advantage of opportunities for seed germination and establishment. Bloom (1988) found that seeds of *Arabis laevigata*, a biennial rock-cress co-occurring with *Arabis perstellata*, remained germinable for several years and found evidence of a seed bank. Bloom (1988) also found that the presence of leaf litter suppressed germination in *Arabis laevigata.* Considering the similar habitat of the two species, it is reasonable to infer that leaf litter may also affect germination of *Arabis perstellata.* In several of the larger populations in Kentucky, the species occurs mostly in areas cleared of herbaceous vegetation and leaf litter by past colluvial slippage. It appears that the lack of leaf litter is likely a requirement for seed germination or seedling survival. The factors affecting seedling establishment are not known, nor is it known whether seed production changes in different environments.

The majority of the land containing *Arabis perstellata* populations is in private ownership. One site (Clements Bluff) in Kentucky is owned by the State and is part of the Kentucky River Wildlife Management Area. This publically owned site is under no formal management agreement at this time. One privately owned site, Strohmeiers Hills in Kentucky, is under a management agreement with the Kentucky Natural Heritage Program. Management activities include sediment and noxious weed control. The agreement is nonbinding and does not restrict the property owner's activities or property rights. Thus, the only protection granted by the management agreement is habitat enhancement.

The primary threats to this species are alteration or loss of habitat through development (primarily home and road construction), competition with native and exotic weedy species, grazing and trampling, and timber harvesting. *Arabis perstellata* is vulnerable to extinction because of its very small range, low abundance, and declining number of populations. Thirty-seven extant populations are known in Kentucky and four in Tennessee. The full range of this species in Kentucky is an approximately 518-square-kilometer (km^2) (200-square-mile (mi^2)) area, with four disjunct populations in Tennessee. This narrow range makes the species vulnerable to potential catastrophic phenomena, such as disease, extreme weather, and insect infestations. Also, population levels are declining (Deborah White, KSNPC, pers. comm. 2003). Eight sites previously known in Kentucky were found to be extirpated during a 1996 survey (KSNPC

1996a). Four historical populations in Tennessee are presumed extirpated (Jones 1991; Tennessee Department of Environment and Conservation (TDEC) 2000).

Previous Federal Action

Federal government actions on this species began with passage of section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Please refer to the final listing rule for a complete description of Federal actions concerning this species between the inception of the Act and the proposed listing rule in 1994.

On January 3, 1994, we published a rule in the **Federal Register** (59 FR 53) proposing to list *Arabis perstellata* (inclusive of the two varieties, *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata*) as endangered. In that proposed rule, we had made a determination that designation of critical habitat was not prudent because such a designation would not be beneficial to the species, but rather could further threaten the species. On January 3, 1995 (60 FR 56), we published our final rule to list *Arabis perstellata* as endangered. In the final rule, consistent with our determination in the proposed rule, we found that a critical habitat designation was not prudent.

On July 22, 1997, we finalized the *Arabis perstellata* Recovery Plan (Service 1997). The recovery plan established the criteria that must be met prior to the delisting of *Arabis perstellata.* The recovery plan also identified the actions that are needed to assist in the recovery of *Arabis perstellata.*

On October 12, 2000, the Southern Appalachian Biodiversity Project filed suit against us, challenging our not prudent critical habitat determinations for *Arabis perstellata* and 15 other federally listed species (*Southern Appalachian Biodiversity Project* v. *U.S. Fish and Wildlife Service, Babbitt, & Clark* (CN 2:00–CV–361 (E.D. TN))). On November 8, 2001, the District Court of the Eastern District of Tennessee issued an order directing us to reconsider our previous prudency determinations and submit a new prudency determination and proposed critical habitat designation, if prudent, for *Arabis perstellata* to the **Federal Register** no later than May 26, 2003, and a final decision not less than twelve months after the new prudency determination.

This proposal is the product of our reevaluation of our 1995 determination that critical habitat designation for *Arabis perstellata* was not prudent. It reflects our interpretation of recent judicial opinions on critical habitat designation and the standards placed on us for making a prudency determination. If additional information becomes available on the species' biology and distribution, and on threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Critical Habitat Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of scarce conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation rather than biology, forces decisions to be made before complete scientific information is available, consumes enormous agency resources that would otherwise be applied to actions of much greater conservation benefit, and may impose large social and economic costs. We believe that rational public policy demands serious attention to this issue in order to allow our limited resources to be applied to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987. Env. Manage.11(4):429–437) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 306 species or 25 percent of the 1,211 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,211 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

With a budget consistently inadequate to fund all of the petition review, listing determinations, and critical habitat designation duties required of us by statute, we have in the past prioritized our efforts and focused our limited resources on adding species in need of protection to the lists of threatened or endangered species. We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat designations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or delayed many listing actions nationwide.

The accelerated schedules of court-ordered designations have left us with almost no ability to provide for adequate public participation or ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA. All are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (I) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary.

In order for habitat to be included in a critical habitat designation, the habitat features must be ''essential to the conservation of the species.'' Such critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area of the species, we will designate only currently known essential areas. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area will not be included in the critical habitat designation. Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides guidance to ensure that our decisions are based on the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, information that should be considered includes the listing package for the species; the recovery plan; articles in peer-reviewed journals; conservation plans developed by States and Counties; scientific status surveys; studies; biological assessments; unpublished materials; and expert opinion or personal knowledge.

Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Therefore, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those 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, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Regulations at 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 activity and the 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. In our January 3, 1995, final listing rule (60 FR 56), we determined that the designation of critical habitat was not prudent for *Arabis perstellata* because such designation would not be beneficial to the species and such a designation could further threaten the species.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit issued a ruling that limited the application of the no benefit justification and required the Service to balance the potential threats

against any benefits to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a not prudent finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280).

If critical habitat is designated for *Arabis perstellata,* Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. It may also provide information to Federal agencies and the general public of the importance of *Arabis perstellata* habitat and the need for special management considerations or protection. A critical habitat designation may assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be reviewed in section 7 consultations.

Though the identification of known plant locations in this proposed rule may increase unauthorized collection, we currently have no knowledge that unauthorized collection is or has been an issue with *Arabis perstellata*. We found no records of unauthorized collection during our literature review or in discussions with researchers. We also have found no evidence that identification of *Arabis perstellata* critical habitat would increase the degree of threat to the species. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent. We find that designation of critical habitat is prudent for *Arabis perstellata* because there is not likely to be increased threats to the species that may result from the critical habitat designation.

B. Methods

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific information available concerning the species' current and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on *Arabis perstellata*, including the physical and biological features that are essential for the conservation of the species (*see* ''Primary Constituent Elements'' section), and identified the areas containing these features. The information used includes known locations, our own site-specific species and habitat information, statewide Geographic Information System (GIS) coverages (*e.g.*, soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, the final listing rule for *Arabis perstellata*, recent biological surveys and reports, peer-reviewed literature, our final recovery plan, and discussions and recommendations from *Arabis perstellata* experts.

C. Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available, and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Much of what is known about the specific physical and biological requirements of *Arabis perstellata* is described in the ''Background'' section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Arabis perstellata* throughout its range, and to provide those habitat components essential for the conservation of the species. These habitat components provide for the following—(1) individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that provide basic requirements for growth, such as water, light, and minerals; and (3) areas that support populations of pollinators and seed dispersal organisms; and (4) habitats that are representative of the historic geographical and ecological distribution of the species.

We believe the conservation of *Arabis perstellata* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow and the maintenance of normal ecological functions within these sites. The areas we are proposing as critical habitat provide some or all of the habitat components essential for the conservation of this species.

Based on the best available information, the primary constituent elements essential for the conservation of *Arabis perstellata* are:

(a) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple *(Acer saccharum),* chinquapin oak *(Quercus muhlenbergii),* hackberry *(Celtus occidentalis),* or Ohio buckeye *(Aesculus glabra)*) ;

(b) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(c) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(d) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(e) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

D. Criteria Used To Identify Critical Habitat

We considered several factors in the selection and proposal of specific areas for critical habitat for *Arabis perstellata*. We assessed the final recovery plan objectives and criteria, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. According to the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations.

Our approach to delineating specific critical habitat units, based on the

recovery criteria outlined above, focused first on considering all areas of suitable habitat within the geographic distribution of this species and the known locations of the extant and historic populations. We evaluated field data collected from documented occurrences, various GIS layers, soil surveys, and United States Geological Survey (USGS) quadrangle maps. These data include *Arabis perstellata* locations, soils, elevation, topography, geologic formations, streams, and current land uses. Originally, there were eight total populations in Tennessee and 47 in Kentucky. Four of the populations in Tennessee and ten in Kentucky are historic and no longer contain one or more of the primary constituent elements present (Jones 1991; TDEC 2000; Deborah White, KSNPC, pers. comm. 2003). By lacking the primary constituent elements, they are not essential to the conservation of *Arabis perstellata*.

Of the known remaining plant sites in Kentucky (37) and Tennessee (4), we identified an additional 21 sites as having fewer than 50 plants and the habitat is degraded. These sites lack the primary constituent elements and, therefore, are not essential to the conservation of *Arabis perstellata*.

The 20 units in this proposed designation include a significant portion, but not all, of the species' historic range. They all contain the primary constituent elements essential for the conservation of *Arabis perstellata* (see ''Primary Constituent Elements'' section). The omission of historically occupied sites and the rest of the currently occupied sites from this proposed critical habitat designation does not diminish their individual or cumulative importance to the species. Rather, it is our determination that the habitat contained within the 20 units included in this proposed rule constitutes our best determination of areas essential for the conservation, and eventual recovery, of *Arabis perstellata*. The 20 units we are proposing as critical habitat encompass approximately 408 ha (1,008 ac) in Kentucky and Tennessee.

To the extent feasible, we will continue, with the assistance of other State, Federal, and private researchers, to conduct surveys, research, and conservation actions on the species and its habitat in areas designated and not designated as critical habitat. If additional information becomes available on the species' biology, distribution, and threats, we will evaluate the need to designate additional critical habitat, delete or reduce critical habitat, or refine the boundaries of critical habitat. Sites that are occupied by this plant that are not being proposed for critical habitat will continue to receive protection under the Act's section 7 jeopardy standard where a Federal nexus may occur (see ''Critical Habitat'' section).

Since the drafting of this proposed critical habitat rule, we have received new information from the TDEC (D. Lincicome, pers. comm. 2003) regarding two new populations of *Arabis perstellata*. One population is located on Townsel Hill, west of the City of Murfreesboro between Newman and Coleman Hill Roads in Rutherford County, Tennessee. This site is adjacent to the proposed Sophie Hill critical habitat site (see ''Proposed Critical Habitat Designation'' section, unit 19) and belongs to the same private landowner. The other population is located on Grandfather Knob between Cainsville and Spain Hill Roads in Wilson County, Tennessee. This site is privately owned by two separate landowners. Both sites contain over 100 *Arabis perstellata* plants and in general, it appears that these two populations might meet the recovery criteria and contain the primary constituent elements. However, these new populations were located following the drafting of the proposed critical habitat rule. Because of time and budget constraints, we are unable to adequately and formally analyze them for inclusion as proposed critical habitat in this document. We will conduct the analysis on these two sites prior to making a final determination on this proposed rule. If we determine these areas to be essential, it would be our intent to include them in the final designation.

E. Mapping

Once we determined that 20 populations are essential to the conservation of *Arabis perstellata*, we used site-specific information to determine the extent of these populations. The proposed critical habitat units were then delineated by screen-digitizing polygons (map units) using ArcView, a computer GIS program. Based on the known plant distribution and allowing for downslope germination, we placed boundaries around the populations that included the plants, as well as their primary constituent elements. In defining these critical habitat boundaries, we made an effort to exclude all developed areas, such as housing developments, open areas, and other lands unlikely to contain the primary constituent elements essential for the conservation of *Arabis perstellata*. We used Kentucky State Plane North/North American Datum 1983 (NAD83) coordinates to designate the boundaries of the proposed critical habitat in Kentucky, and Tennessee State Plane/NAD83 coordinates to designate the boundaries of the proposed critical habitat in Tennessee.

Proposed Critical Habitat Designation

The areas proposed for designation as critical habitat for *Arabis perstellata* provide the primary constituent elements described above. Table 1 summarizes the location and extent of proposed critical habitat. All of the proposed areas require special management considerations to ensure their contribution to the conservation of *Arabis perstellata*. We provide general descriptions of the boundaries of proposed critical habitat units below.

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*

Critical habitat unit	County/State	Land ownership	Hectares	Acres
1. Sky View Drive	Franklin/Kentucky	Private	22	54
2. Benson Valley Woods	Franklin/Kentucky	Private	37	91
3. Red Bridge Ridge	Franklin/Kentucky	Private	6	15
4. Tributary to South Benson Creek	Franklin/Kentucky	Private	10	25
5. Davis Branch	Franklin/Kentucky	Private	3	7
6. Onans Bend	Franklin/Kentucky	Private	12	30
7. Shadrock Ferry Road	Franklin/Kentucky	Private	15	37
8. Hoover Site	Franklin/Kentucky	Private	83	205
9. Longs Ravine Site	Franklin/Kentucky	Private	30	74
10. Strohmeiers Hill	Franklin/Kentucky	Private	20	49

TABLE 1.—APPROXIMATE AREA (HECTARES AND ACRES) OF PROPOSED CRITICAL HABITAT BY UNIT FOR *Arabis perstellata*—Continued

Critical habitat unit	County/State	Land ownership	Hectares	Acres
11. U.S. 127	Franklin/Kentucky	Private	11	27
12. Camp Pleasant Branch Woods	Franklin/Kentucky	Private	14	35
13. Saufley	Franklin/Kentucky	Private	8	20
14. Clements Bluff	Owen/Kentucky	State	11	27
15. Monterey U.S. 127	Owen/Kentucky	Private	12	30
16. Craddock Bottom	Owen/Kentucky	Private	23	57
17. Backbone North	Franklin/Kentucky	Private	11	27
18. Scales Mountain	Rutherford/Tennessee	Private	36	89
19. Sophie Hill	Rutherford/Tennessee	Private	16	40
20. Indian Mountain	Rutherford/Tennessee	Private	28	69
Total			408	1,008

Critical Habitat Unit Descriptions

We are proposing a total of 20 critical habitat units for *Arabis perstellata* in Kentucky and Tennessee—14 critical habitat units in Franklin County, Kentucky; 3 in Owen County, Kentucky; and 3 in Rutherford County, Tennessee. In order to provide determinable legal descriptions of the critical habitat boundaries, we drew polygons around these units, using as criteria the plant's primary constituent elements, the known extent of the populations, and the elevation contours on the map. We made an effort to avoid developed areas that are unlikely to contribute to the conservation of *Arabis perstellata.* Areas within the boundaries of the mapped units, such as buildings, roads, clearings, transmission lines, lawns, and other urban landscaped areas do not contain one or more of the primary constituent elements. As such, Federal actions limited to these areas would not trigger consultation pursuant to section 7 of the Act, unless they affect the species or primary constituent elements in the critical habitat.

On the basis of the best available scientific information, we determined that the 20 proposed critical habitat units represent the only known *Arabis perstellata* populations that meet the recovery criteria of being geographically distinct, self-sustaining, and containing 50 or more plants. These 20 sites contain the highest-quality populations in terms of size and habitat that are presently known. The remaining known populations (21) of *Arabis perstellata* do not meet these criteria, because each has fewer than 50 plants that occur on degraded sites, making their long-term viability questionable. As such, they are not essential to the conservation of this species. Once the proposed 20 sites have adequate management and permanent protection measures in place and their populations are stable or increasing for a 5-year period, we may consider this species for delisting. Consequently, the proposed units are essential for the long-term conservation and eventual recovery of this species because they constitute the 20 geographically distinct sites that are most likely to be able to support self-sustaining populations of 50 or more individuals, as outlined in the recovery criteria.

A brief description of each of these critical habitat units is given below. The population information presented in all of the unit descriptions was taken from the KSNPC's Natural Heritage Database for the Kentucky units and the TDEC's Natural Heritage Database for the Tennessee units.

Unit 1. Sky View Drive in Franklin County, Kentucky

Unit 1 is located on the west side of the City of Frankfort. It occurs along U.S. 127 and Skyview Drive on the slopes of the first large ravine system due west of the confluence of Benson Creek and the Kentucky River. It contains approximately 22 ha (54 ac), all of which are privately owned. This site was first observed to have *Arabis perstellata* in 1979. In 2001, surveys conducted by the KSNPC found more than 150 plants, but not all habitat was surveyed. The majority of the plants occur on the west- and south-facing slopes and are associated with bare soil on trails and tree bases.

Unit 2. Benson Valley Woods in Franklin County, Kentucky

Unit 2 is located west of the City of Frankfort. The unit lies southeast of Benson Valley Road on the south side of Benson Creek. It is privately owned and contains approximately 37 ha (91 ac). The plants occur on the southeast-facing slope. They were first observed in 1979. KSNPC personnel last observed more than 200 plants in 2001. The site is threatened by trampling and competition by weeds.

Unit 3. Red Bridge Ridge in Franklin County, Kentucky

Unit 3 is located west of Kentucky (KY) Highway 1005, at the confluence of South Benson and Benson Creeks. The site is privately owned and is approximately 6 ha (15 ac) in size. Plants at this site were first observed in 1987. In 1990, 75 plants were found along the southeast- and northwest-facing slopes.

Unit 4. Tributary to South Benson Creek in Franklin County, Kentucky

This unit is located northeast of the City of Frankfort. It occurs along the southeast side of South Benson Creek and the north and south slopes of an unnamed tributary. The site is in private ownership and is 10 ha (25 ac) in size. In 1996, over 1,000 plants were found along the northwest-facing lower, mid, and upper slopes, making this one of the best sites in Kentucky for *Arabis perstellata*.

Unit 5. Davis Branch in Franklin County, Kentucky

This unit occurs along the east side of Harvieland Drive and Davis Branch. This unit contains approximately 3 ha (7 ac) and is privately owned. Plants were first observed at this site in 1990. In 2001, more than 200 plants were found along the south-facing slope throughout the ravine system.

Unit 6. Onans Bend in Franklin County, Kentucky

Unit 6 occurs north of Onans Bend Road and east of KY Highway 12. The unit lies along the banks of an unnamed stream near its mouth with the west bank of the Kentucky River. This unit is privately owned and contains approximately 12 ha (30 ac). Plants at this unit were first observed in 1979. In 1990, more than 100 plants were found on the south-facing slope. The plants were exceptionally vigorous. The site is threatened by weed competition.

Unit 7. Shadrock Ferry Road in Franklin County, Kentucky

This unit is located along the north side of Shadrock Ferry Road (KY Highway 898). Property at this location is in private ownership. This unit is approximately 15 ha (37 ac) in size. Plants were first observed at this site in 1996. In 2001, more than 100 plants were found on the south-facing slope.

Unit 8. Hoover Site in Franklin County, Kentucky

This unit lies northwest of the City of Frankfort, along the west side of the Kentucky River on slopes bordering two unnamed tributaries. Plants are widely scattered in small groups along the Kentucky River bluff from river kilometer (km) 98.6 to 101.7 (river mile 61.3 to 63.2. This unit is in private ownership and contains approximately 83 ha (205 ac). The plants were first observed in 1990. In 1996, more than 200 plants were found.

Unit 9. Longs Ravine Site in Franklin County, Kentucky

Unit 9 is located north of the City of Frankfort and Lewis Ferry Road. This unit lies east of the Kentucky River in a large ravine and along the steep slopes above the river. This unit is privately owned. There are approximately 30 ha (74 ac) in this unit. In 1990, more than 250 plants were found on the northeast, southwest, and northwest-facing slopes.

Unit 10. Strohmeiers Hill in Franklin County, Kentucky

This unit is located south of the Town of Swallowfield and adjacent to Strohmeier Road and U.S. 127. It occurs on steep slopes on the south side of Elkhorn Creek and on the east bank of the Kentucky River, south of the confluence with Elkhorn Creek. The plants at this site were first observed in 1930. The property is privately owned. The site is approximately 20 ha (49 ac) in size. In 1994, the site contained more than 200 flowering plants. The plants were exceptionally vigorous and occurred throughout a large area, making this one of the best populations of *Arabis perstellata* in Kentucky

Unit 11. U.S. 127 in Franklin County, Kentucky

Unit 11 is located along the east side of U.S. 127 in a ravine just southeast of Elkhorn Creek. This privately owned site is approximately 11 ha (27 ac) in size. The plants were first observed in 2001, at which time approximately 100 plants were found on the west-facing slope.

Unit 12. Camp Pleasant Branch Woods in Franklin County, Kentucky

Unit 12 is located along the south side of Camp Pleasant Road (KY Highway 1707). This site is privately owned and contains approximately 14 ha (35 ac). The first observance of plants at this site was in 1987. In 2001, more than 100 plants were found along the lower northwest-facing slope. Plants at this site are threatened by competition from weeds.

Unit 13. Saufley in Franklin County, Kentucky

Unit 13 occurs west of the KY Highway 1900 bridge over Elkhorn Creek on the hillside above the creek. The land ownership for this unit is private. The site is approximately 8 ha (20 ac) in size. Plants were first observed in 1988. In 1996, more than 100 plants were found along the top of the ridge on the northeast-facing slope.

Unit 14. Clements Bluff in Owen County, Kentucky

This unit is located in a ravine facing the Kentucky River along the east side of KY Highway 355. The site is owned by the State of Kentucky and is part of the Kentucky River Wildlife Management Area. This unit is approximately 11 ha (27 ac) in size. The plants were first observed at this site in 1980 on the north-facing slope. In 1996, approximately 100 plants occurred at the site.

Unit 15. Monterey U.S. 127 in Owen County, Kentucky

Unit 15 is located 1.6 km (1 mile) north of the City of Monterey, just north of the junction of U.S. 127 and KY Highway 355. The property is privately owned and is approximately 12 ha (30 ac) in size. Plants were first observed at this site in 1996. In 1997, 150 plants were found along the southwest-facing slope of an unnamed tributary to the Kentucky River. The site is being threatened by weedy competition.

Unit 16. Craddock Bottom in Owen County, Kentucky

This unit is located south of the City of Monterey. It occurs along the west side of Old Frankfort Pike on the west-facing slope just east of Craddock Bottom. Property at this site is privately owned and contains approximately 23 ha (57 ac). In 1996, over 150 plants were found. In 1996, there was evidence of logging in the surrounding area.

Unit 17. Backbone North in Franklin County, Kentucky

Unit 17 is located north of KY Highway 1900. It occurs in an old river oxbow west of the existing Elkhorn Creek and is privately owned. The unit size is approximately 11 ha (27 ac). Plants were first observed at this site in 1981. In 1990, more than 200 plants were found on the southeast facing slope.

Unit 18. Scales Mountain in Rutherford County, Tennessee

This unit is located west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. The site is privately owned and is 36 ha (89 ac) in size. Plants were first observed at this site in 1985. In 2000, more than 100 plants were found on the north-facing slope. The primary threat to this site is competition from weeds.

Unit 19. Sophie Hill in Rutherford County, Tennessee

Unit 19 is located west of the City of Murfreesboro on Sophie Hill, which lies between Newman and Coleman Hill Roads. The property at this site is privately owned. The unit is approximately 16 ha (40 ac) in size. The first observance of *Arabis perstellata* on this site was in 1991. In 2000, more than 200 plants were found on the northwest side of Sophie Hill.

Unit 20. Indian Mountain in Rutherford County, Tennessee

Unit 20 is located west of the City of Murfreesboro on Indian Mountain between Highway 96 and Coleman Hill Road. This site is privately owned. The unit size is approximately 28 ha (69 ac). In 2000, over 2,600 plants were found. This is the best site for *Arabis perstellata* in Tennessee. Logging appears to be the biggest threat to this exceptional site.

Effects of Critical Habitat Designation

ESA Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the

destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of 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 critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

There are no known populations of *Arabis perstellata* occurring on Federal lands. However, activities on private, State, or city lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water Act, a permit under section 10(a)(1)(B) of the Act from us, or some other Federal action—including funding (*e.g.*, from the Federal Highway Administration (FHWA), Federal Aviation Administration, or Federal Emergency Management Agency); permits from the Department of Housing and Urban Development; activities funded by the U.S. Environmental Protection Agency (EPA), Department of Energy, or any other Federal agency; and construction of communication sites licensed by the Federal Communications Commission—will be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the conservation of *Arabis perstellata* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Ground disturbances that destroy or degrade primary constituent elements of the plant (*e.g.*, clearing, tilling, grading, logging, construction, and road building);

(2) Activities that directly or indirectly affect *Arabis perstellata* plants or underlying seed bank (*e.g.*, herbicide application that could degrade the habitat on which the species depends, incompatible introductions of non-native herbivores, incompatible grazing management, clearing, tilling, grading, construction, and road building);

(3) Activities that encourage the growth of *Arabis perstellata* competitors (*e.g.*, widespread fertilizer application, road building, clearing, logging); and

(4) Activities that significantly degrade or destroy *Arabis perstellata* pollinator populations (*e.g.*, pesticide applications).

Previous Section 7 Consultations

Several section 7 consultations for Federal actions affecting *Arabis perstellata* and its habitat have preceded this critical habitat proposal. The action agencies have included the USACE, U.S. Department of Agriculture Rural Development, FHWA, and EPA.

Since listing, we have conducted 33 informal and no formal consultations involving *Arabis perstellata*. The informal consultations, all of which concluded with a finding that the proposed Federal action would not affect or would not likely adversely

affect *Arabis perstellata*, addressed a range of actions, including highway and bridge construction, maintenance of utility lines (*e.g.*, water and sewer lines) along existing roads, and building construction.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Kentucky-Frankfort Ecological Services Office (502/695–0468)

Tennessee-Cookeville Ecological Services Office (931/528–6481)

To request copies of the regulations on listed wildlife and plants or inquire about prohibitions and permits, contact the U.S. Fish and Wildlife Service, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (telephone 404/679–4176; facsimile 404/679–7081).

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We have completed a draft analysis of the economic impacts of designating these areas as critical habitat that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n* v. *USFWS.* The results of our draft analysis suggest that the potential economic impacts of the proposed designation range from $65,000 to $272,000 over the next 10 years. Please refer to the draft analysis for more details concerning the methodological approach and finding of the analysis. Comments will be accepted on the draft economic analysis during the comment period on this proposed rule. Copies of the draft economic analysis of this proposed critical habitat designation are available on the Internet at *http://cookeville.fws.gov* or by contacting our Cookeville, TN field office (see **ADDRESSES**).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not generally prohibited by the Act on private land, listed plant species may also be covered in an HCP for wildlife species. Currently, no HCPs exist that include *Arabis perstellata* as a covered species. In the event that future HCPs covering *Arabis perstellata* are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *Arabis perstellata*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology. We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Arabis perstellata*, and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Peer Review

In accordance with our joint policy 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 such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

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

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** Section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Execsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule

will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government.

This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not reviewed this proposed critical habitat designation.

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

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

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as 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.

SBREFA does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-op Inc.* v. *F.E.R.C.,* 773 F.2d 327 (D.C. Cir. 1985) and *American Trucking Associations, Inc.* v. U.S. E.P.A., 175 F.3d 1027, (D.C. Cir. 1999)).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the ''substantial number'' test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Arabis perstellata.*

If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we believe this will result in minimal additional regulatory burden on Federal agencies or their applicants because consultation would already be required because of the presence of the listed species, and consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Designation of critical habitat could result in an additional economic burden on small entities because of the requirement to reinitiate consultation for ongoing Federal activities. However, since *Arabia perstellata* was listed in 1995, we have conducted only 33 informal and no formal consultations involving this species. Most of these consultations involved Federal projects or permits to businesses that do not meet the definition of a small entity (*e.g.*, federally sponsored projects). Also, a number of USACE permit actions involved other large public entities (*e.g.*, State-sponsored activities) that do not meet the definition of a small entity. No formal consultations involved a non-Federal entity. However, about five informal consultations were on behalf of a private business. Most of these informal consultations were utility-related (*e.g.*, water lines and sewer lines), some being proposed by small entities. We do not believe that the number of utility-related small entities meets the definition of substantial described above.

All of the proposed critical habitat, with the exception of 11 ha (27 ac) of State-owned land, is under private ownership. Small entity economic activities that may require Federal authorization or permits include utility-related activities such as pipelines and powerlines. However, we are not aware of a significant number of future activities that would require Federal permitting or authorization in these areas. Historically, there have been less than two informal consultations per State per year involving both large and small private entities. There are no Federal lands included in these proposed critical habitat designations. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. We have concluded that it would not affect a substantial number of small entities. There would be no additional section 7 consultations resulting from this rule as all proposed critical habitat is currently occupied by *Arabia perstellata*, so the consultation requirement has already been triggered. These consultations are not likely to affect a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Therefore, we are certifying that

the proposed designation of critical habitat for *Arabia perstellata* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after review of our economic analysis and revised, if necessary, in the final rule.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish and Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the draft economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The primary land uses within designated critical habitat for *Arabis perstellata* include recreation, grazing, and logging. No significant energy production, supply, and distribution facilities are included within designated critical habitat. Therefore, this action is not a significant action affecting energy production, supply, and distribution facilities, and no Statement of Energy Effects is required.

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

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

(a) This proposed rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new obligations on State or local governments.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing to designate approximately 408 ha (1,008 ac) of lands in Franklin and Owen counties in Kentucky, and Rutherford county in Tennessee, as critical habitat for *Arabis perstellata* in a takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resource agencies in Kentucky and Tennessee. The impact of the proposed designation on State and local governments and their activities is not believed to be significant, and we are examining this more fully in the economic analysis of the proposal, on which we are seeking public comment. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than forcing/necessitating them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, 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, as amended. This rule uses standard property descriptions and identifies the primary constituent elements within the proposed areas to assist the public in understanding the habitat needs that are essential for the conservation of *Arabis perstellata*.

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

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. 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

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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, 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. We are not aware of any Tribal lands essential for the conservation of *Arabis perstellata*. Therefore, the proposed critical habitat for *Arabis perstellata* does not contain any Tribal lands or

lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Cookeville Field Office (*see* **ADDRESSES** section).

Author

The primary author of this document is Timothy Merritt (*see* **ADDRESSES** section), 931/528–6481, extension 211.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In section 17.12(h), revise the entry for the ''*Arabis perstellata*'' under ''FLOWERING PLANTS'' in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
FLOWERING PLANTS							
*	*	*	*	*	*		*
Arabis perstellata	Rock-cress, Braun's	U.S.A. (KY, TN)	Brassicaceae	E	570	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96, amend paragraph (a) by adding an entry for ''Family Brassicaceae'' *Arabis perstellata* in alphabetical order to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Brassicaceae: *Arabis perstellata* (Braun's rock-cress).

(1) Critical habitat units are depicted for Franklin and Owen Counties, Kentucky, and Rutherford County, Tennessee, on the maps below.

(2) Based on the best available information, primary constituent elements essential for the conservation of *Arabis perstellata* are:

(i) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtus occidentalis*), or Ohio buckeye (*Aesculus glabra*);

(ii) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(iii) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(iv) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(v) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

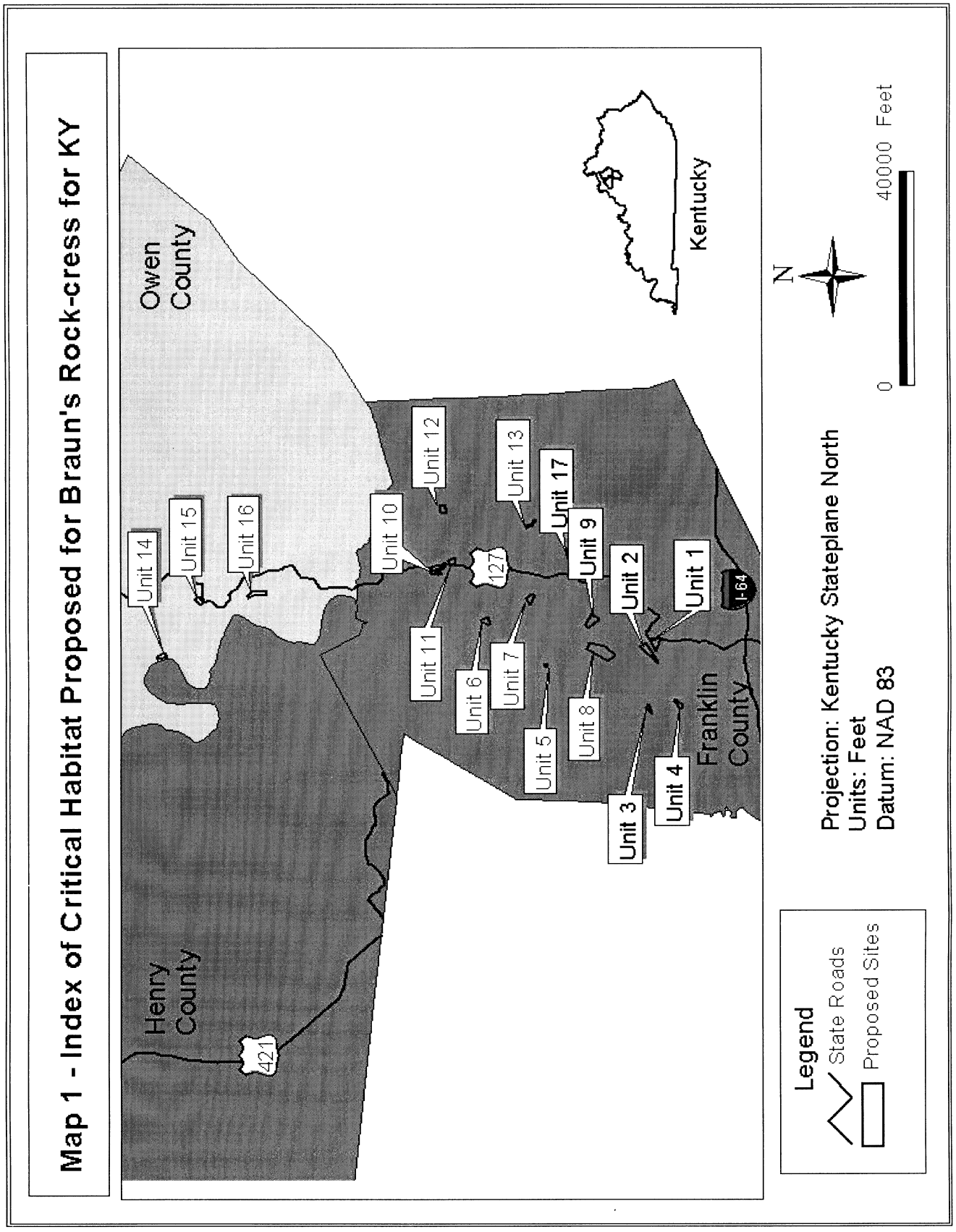
(3) Existing features and structures made by people, such as buildings, roads, railroads, airports, other paved areas, lawns, and other urban landscaped areas, do not contain one or more of the primary constituent elements and are not critical habitat. Federal actions limited to those areas, therefore, would not trigger a consultation under section 7 of the Act unless they may affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and proposed critical habitat units were then mapped in feet using Kentucky State Plane North, NAD 83, and Tennessee State Plane, NAD 83, coordinates.

(ii) Map 1, Index of Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(5) Unit 1: Sky View Drive, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land

bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453158.08, 257013.95; 1455318.02, 258193.89; 1455537.40, 256159.34.

(6) Unit 2: Benson Valley Woods, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1472992.79, 265095.85; 1473291.28, 265164.80; 1473577.90, 265164.80; 1474816.35, 265479.91; 1475173.07, 265669.44; 1475272.97, 265517.23; 1474329.11, 265036.38; 1473438.80, 264939.25; 1472992.42, 264858.64.

(7) Unit 3: Red Bridge Ridge, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1442614.00, 258863.10; 1443144.60, 258502.62; 1441670.26, 257801.90; 1441581.15, 258012.52.

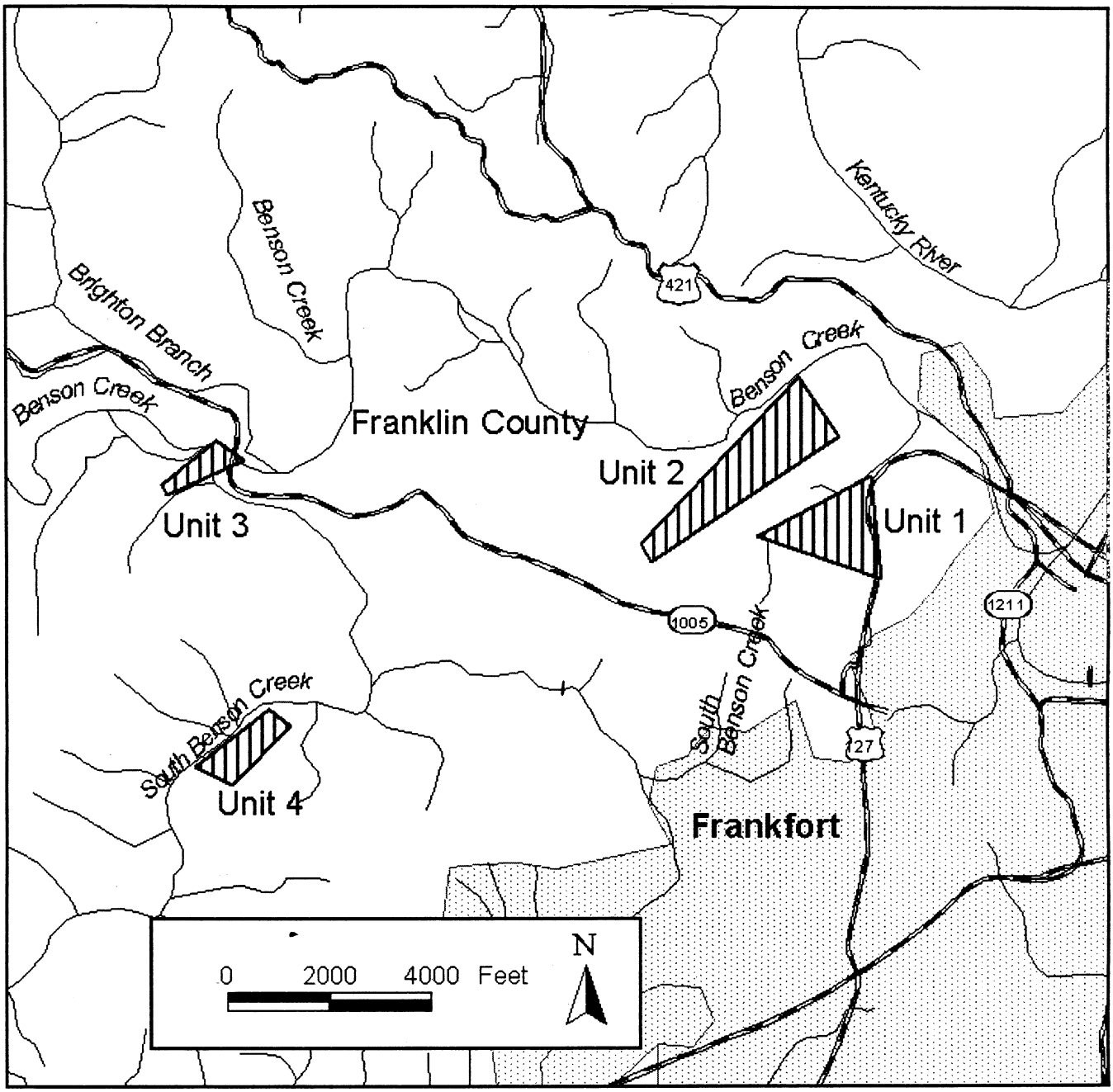
(8) Unit 4: Tributary to South Benson Creek, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1443620.37, 253609.15; 1444037.01, 253294.00; 1442925.97, 252129.54; 1442210.20, 252471.40.

(ii) Map 2, Units 1, 2, 3, and 4, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

BILLING CODE 4310–55–P

Map 2 - Units 1, 2, 3 and 4: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(9) Unit 5: Davis Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates:

1450167.05, 277739.69; 1450767.00, 277750.87; 1450761.41, 277314.88; 1450202.46, 277180.73.

(10) Unit 6: Onans Bend, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle map Polsgrove, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1458610.26, 289401.40; 1459066.14, 289401.50; 1459484.82, 288182.67; 1458210.30, 287759.68; 1458191.76, 288155.34.

(11) Unit 7: Shadrock Ferry Road, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1461695.27, 280422.79; 1462823.09, 280986.70; 1463880.43, 280256.18; 1463463.90, 279506.43.

(12) Unit 8: Hoover Site, Franklin County, Kentucky.

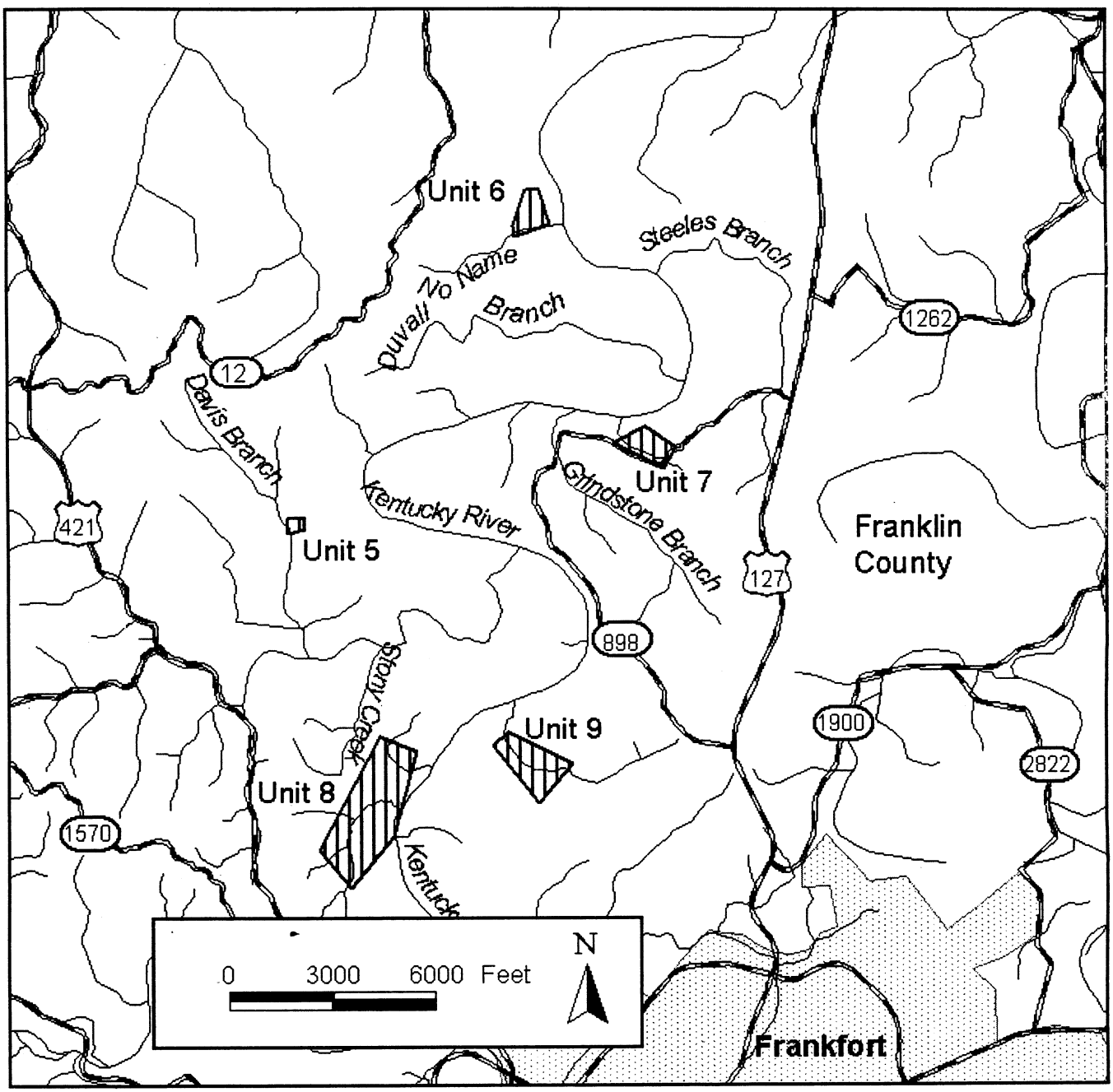
(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71, 269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(13) Unit 9: Longs Ravine Site, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1457404.81, 269596.23; 1457959.89, 270126.46; 1460205.09, 268958.30; 1459003.79, 267607.86.

(ii) Map 3, Units 5, 6, 7, 8, and 9, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 3 - Units 5, 6, 7, 8 and 9: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(14) Unit 10: Strohmeiers Hills, Franklin County, Kentucky.

(i) From USGS 1:24,0000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1467733.92,

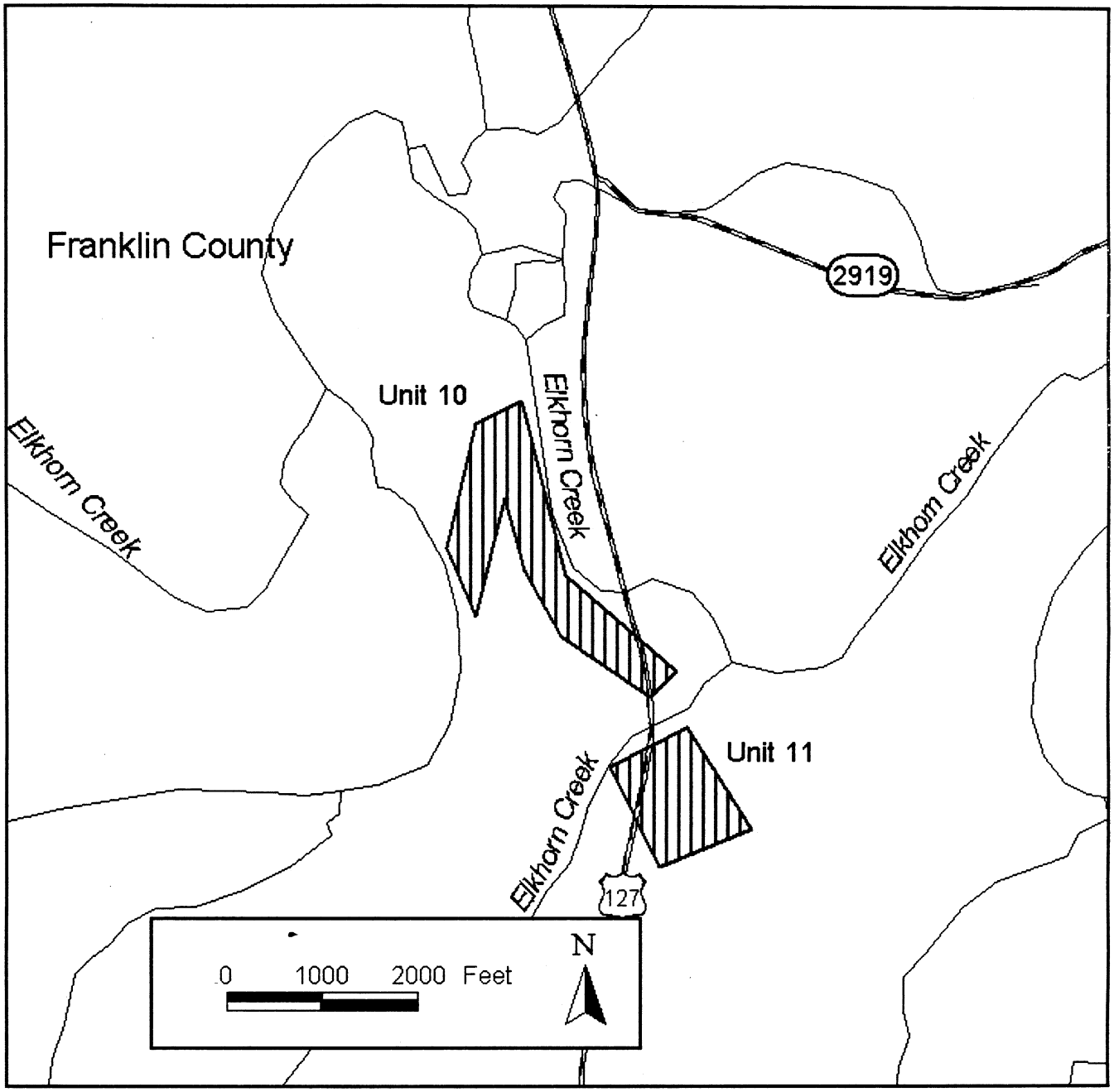
298729.06; 1468218.13, 298978.50; 1468695.00, 297144.38; 1469854.17, 296131.94; 1469568.53, 295848.76; 1468658.32, 296498.77; 1468247.47, 297181.06; 1468056.72, 297936.72; 1467763.26, 296704.19; 1467440.46, 297415.83.

(15) Unit 11: U.S. 127, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky. Lands bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1469164.24, 295115.19; 1469939.07, 295511.62; 1470629.82, 294466.49; 1469662.78, 294058.06.

(ii) Map 4, Units 10 and 11, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 4 - Units 10 and 11: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(16) Unit 12: Camp Pleasant Branch, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1453446.71,

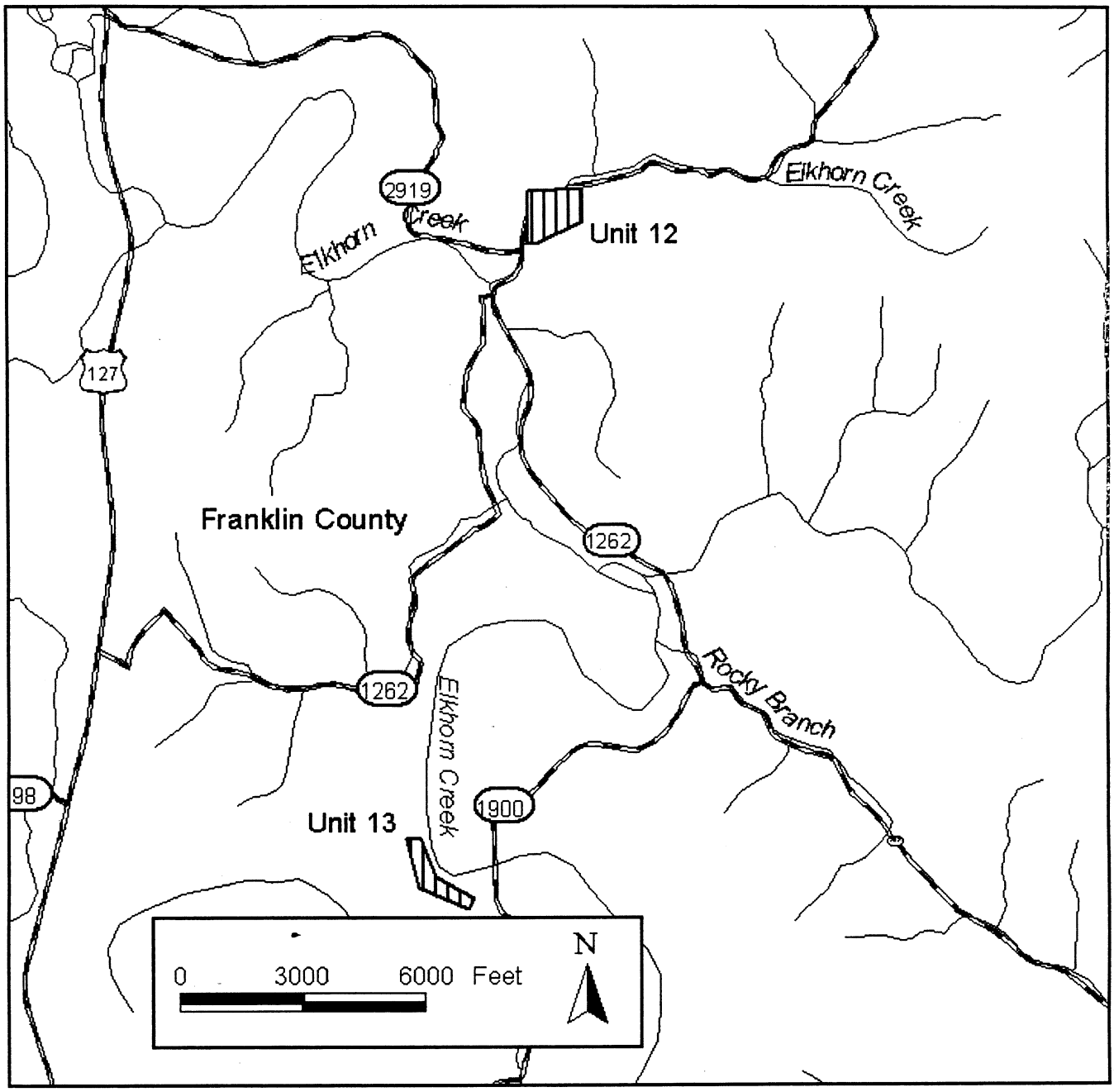
269919.75; 1454641.35, 269410.27; 1453921.05, 266476.39; 1452392.62, 264561.46; 1451250.69, 265879.07.

(17) Unit 13: Saufley, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Switzer, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1476234.26, 281055.05; 1476538.92, 281115.98; 1476924.83, 280171.52; 1477848.97, 279612.98; 1476538.92, 279887.17.

(ii) Map 5, Units 12 and 13, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 5 - Units 12 and 13: critical habitat for Braun's rock-cress in Kentucky.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(18) Unit 14: Clements Bluff, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangle Gratz, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1451615.01,

349295.36; 1452022.39, 349505.61; 1452910.30, 347908.24; 1452180.35, 347473.85.

(19) Unit 15: Monterey U.S. 127, Owen County, Kentucky.

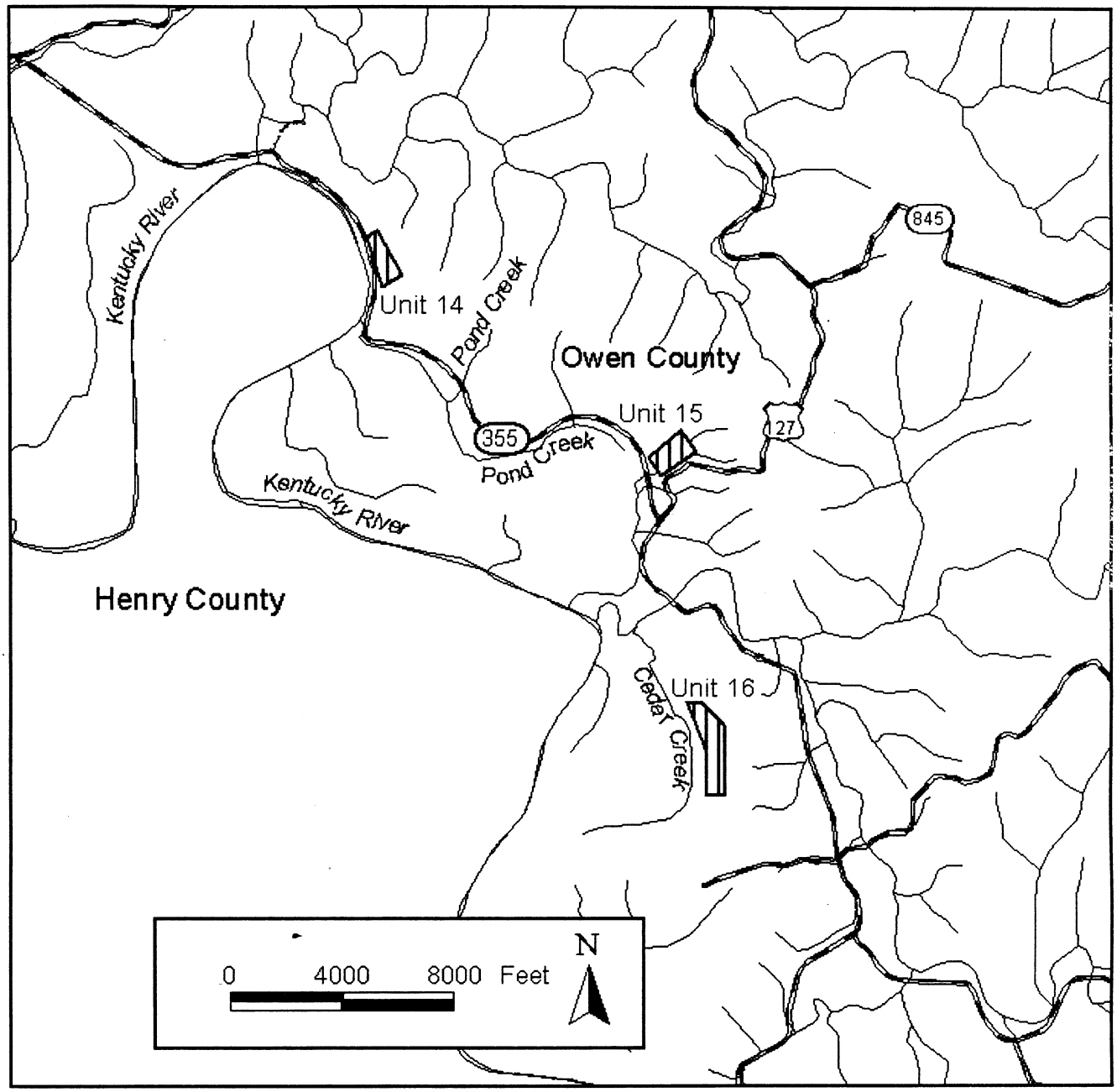
(i) From USGS 1:24,000 quadrangle Monterey, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1462791.17, 342357.03; 1463347.35, 341639.38; 1462109.41, 340778.21; 1461660.88, 341370.27.

(20) Unit 16: Craddock Bottom, Owen County, Kentucky.

(i) From USGS 1:24,000 quadrangles Frankfort East and West, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates: 1463039.86, 332602.65; 1463575.00, 332555.43; 1464377.71, 331784.20; 1464377.71, 329218.68; 1463748.13, 329202.94; 1463716.65, 330918.53.

(ii) Map 6, Units 14, 15, and 16, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 6 - Units 14, 15 and 16: critical habitat for Braun's rock-cress in Kentucky.



This map is provided for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

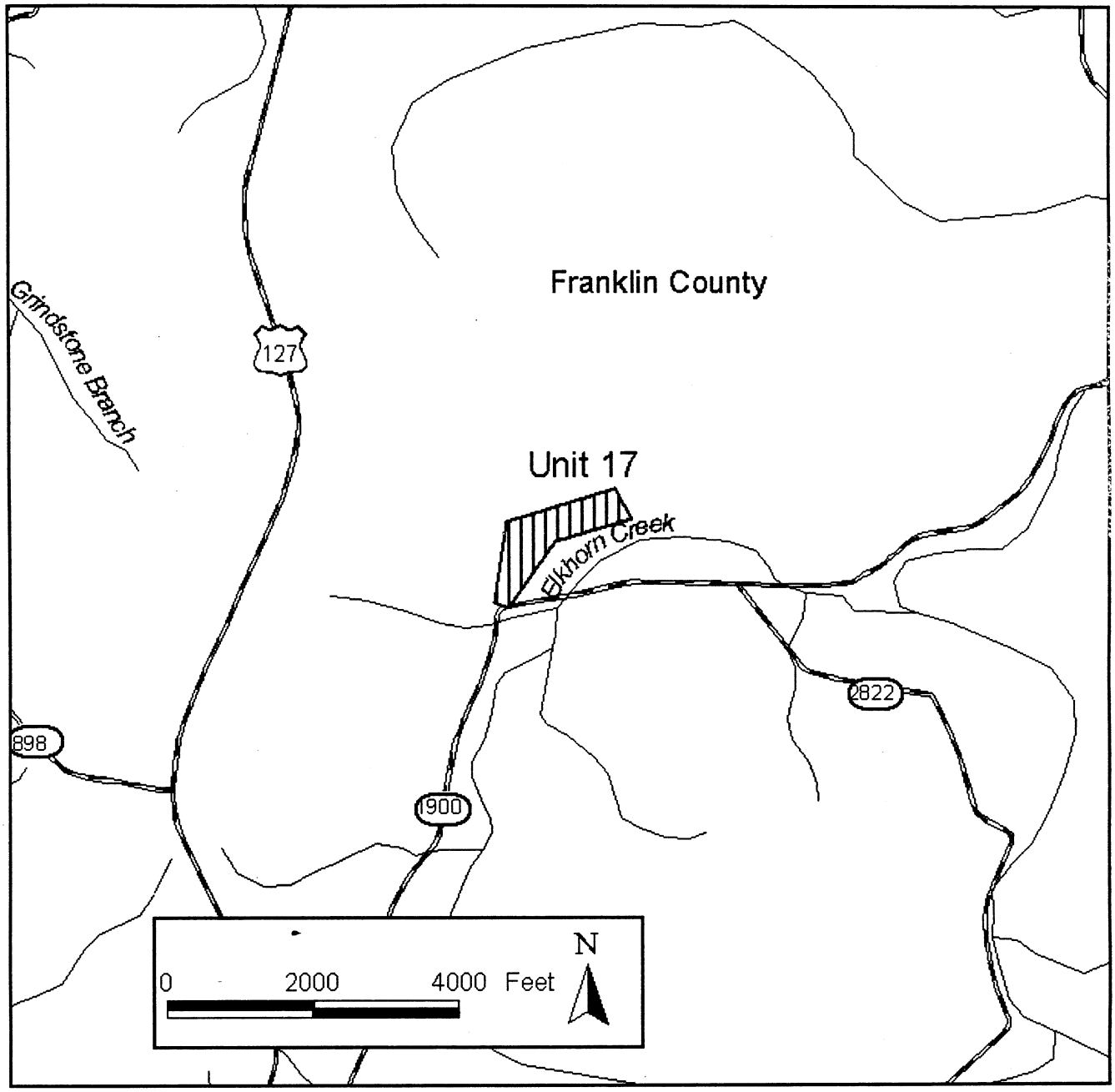
(21) Unit 17: Backbone North, Franklin County, Kentucky.

(i) From USGS 1:24,000 quadrangle Frankfort East, Kentucky; land bounded by the following Kentucky State Plane North/NAD83 (feet) coordinates:

1470487.13, 273240.06; 1471988.00, 273697.42; 1472199.59, 273279.29; 1471168.97, 272953.00; 1470516.94, 272031.81; 1470339.01, 272116.74.

(ii) Map 7, Unit 17, Critical Habitat Proposed for Braun's Rock-cress, Kentucky, follows:

Map 7 - Unit 17: critical habitat for Braun's rock-cress in Kentucky.



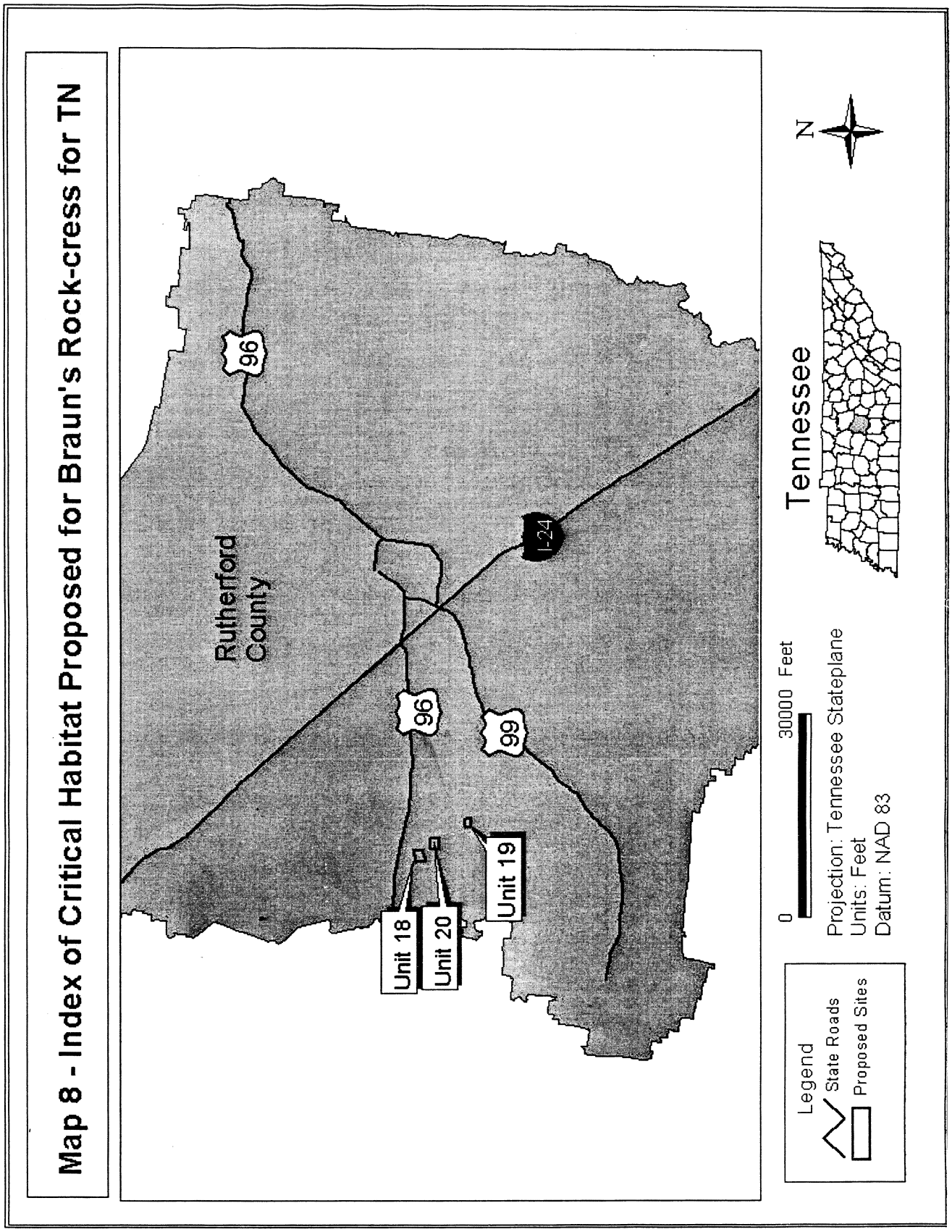
This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

(21) Index map for Tennessee.

(i) Data layers defining map unit were created on a base of USGS 7.5″ quadrangles and proposed critical habitat units were then mapped in feet

using Tennessee State Plane, NAD 83, coordinates.

(ii) Map 8, Index of Critical Habitat Proposed for Braun's Rock-cress, Tennessee, follows:



(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N):

1797871.97, 548892.57; 1800101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19.

(23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

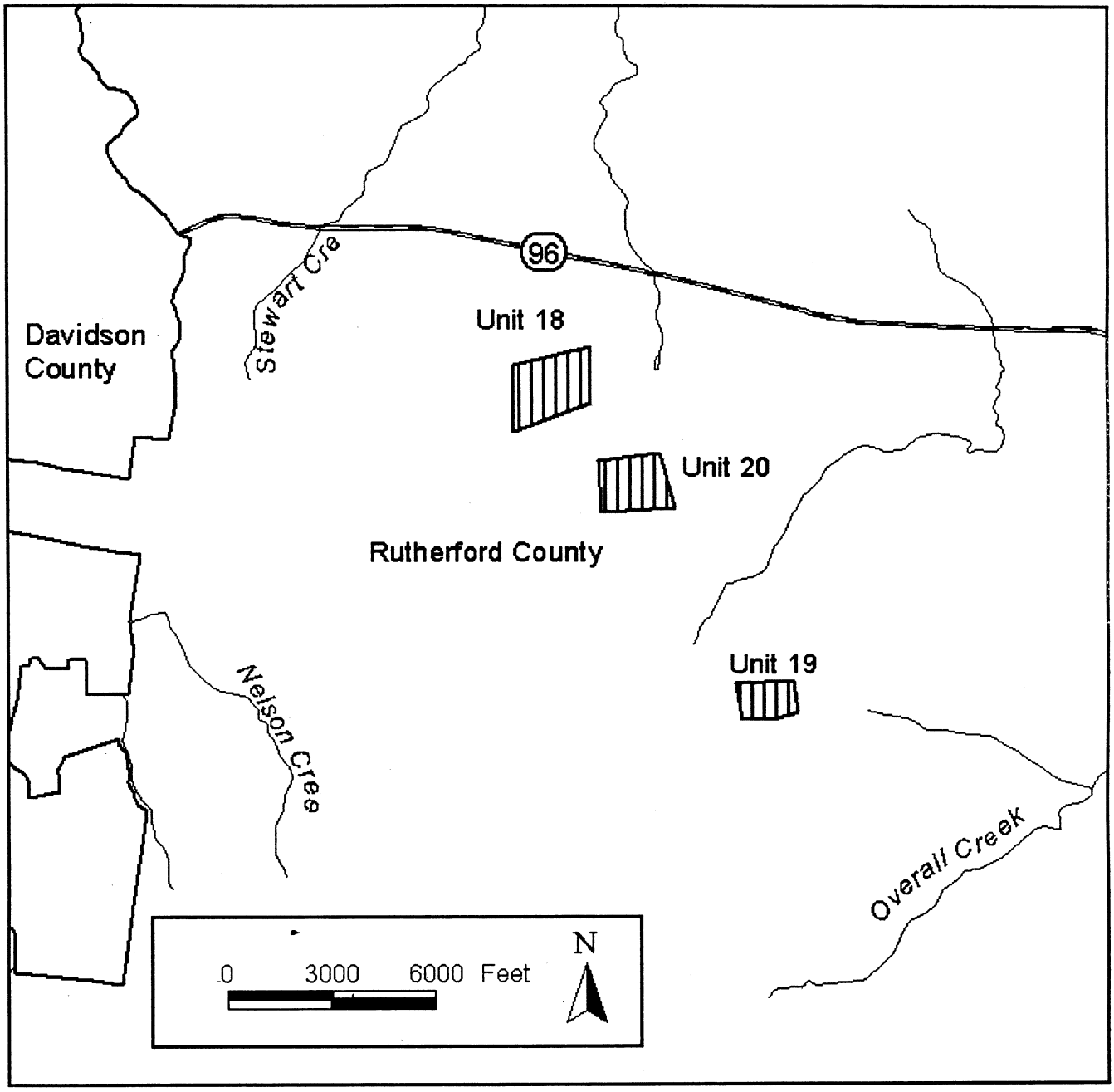
(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N): 1804270.37, 539691.44; 1805958.29, 539809.20; 1806076.05, 538867.10; 1804427.38, 538631.58.

(24) Unit 20: Indian Mountain, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane/NAD83 (feet) coordinates (E,N): 1800305.71, 546168.35; 1802111.40, 546443.12; 1802543.19, 544794.46; 1800423.48, 544676.69.

(ii) Map 9, Units 18, 19, and 20, Critical Habitat for the Braun's Rockcress, Tennessee, follows:

Map 9 - Units 18, 19 and 20: critical habitat for Braun's rock-cress in Tennessee.



This map is provided only for illustrative purposes of critical habitat only. For the precise legal definition of critical habitat, please refer to the narrative unit descriptions.

Dated: May 23, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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