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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Georgia Rockcress; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2013–0030; 4500030113]

RIN 1018–AZ55

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Georgia Rockcress

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for *Arabis georgiana* (Georgia rockcress) under the Endangered Species Act of 1973, as amended (Act). In total, we propose to designate as critical habitat approximately 323 hectares (786 acres) of riparian, river bluff habitat for this species. The intended effect of this rule is to conserve Georgia rockcress and its habitat under the Act. The proposed critical habitat is located in Georgia, including parts of Gordon, Floyd, Harris, Muscogee, Chattahoochee, and Clay Counties, and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Russell, Sumter, and Wilcox Counties.

DATES: We will accept comments received or postmarked on or before November 12, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by October 28, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter Docket No. FWS–R4–ES–2013–0030, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0030; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/athens/, http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0030, and at the Ecological Services Office in Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sandy Tucker, Field Supervisor, U.S. Fish and Wildlife Service, 105 Westpark Dr., Suite D, Athens, GA 30606; telephone 706–613–9493; facsimile 706–613–6059. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: We will refer to *Arabis georgiana* by its common name, Georgia rockcress, in this proposed rule.

Executive Summary

Why we need to publish a rule. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Designations and revisions of critical habitat can only be completed by issuing a rule in the **Federal Register**. Elsewhere in today's **Federal Register**, we propose to list Georgia rockcress as threatened under the Act.

This rule proposes to designate critical habitat for Georgia rockcress. In total, we propose to designate as critical habitat approximately 323 hectares (786 acres) of riparian, river bluff habitat for the species. The proposed critical habitat is located in Georgia, including parts of Gordon, Floyd, Harris, Muscogee, Chattahoochee, and Clay Counties, and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Russell, Sumter, and Wilcox Counties.

The basis for our action. Under the Act, if we intend to list a species as endangered or threatened throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** to list the species as endangered or threatened and make a determination on our proposal within 1 year. We are also required under the Act to designate critical habitat, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act concurrently with listing.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal.

Information Requested

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

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Georgia rockcress and its habitat;

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

(c) What areas not occupied at the time of listing (i.e., currently not occupied) are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and

possible impacts of these activities on this species and proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Georgia rockcress and proposed critical habitat.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(7) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

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

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

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

Previous Federal Actions

For information on previous Federal actions concerning Georgia rockcress, refer to the proposal to list Georgia rockcress as a threatened species under the Act, which appears elsewhere in today's **Federal Register**.

Background

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

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

(a) Essential to the conservation of the species and

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

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

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

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

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it is listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

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

available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of a listed species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools continue to contribute to recovery of the listed species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudency Determination

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

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

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

There is currently no imminent threat of take attributed to collection or vandalism for this species (see the proposed listing rule, which appears elsewhere in today's **Federal Register**), and identification and mapping of critical habitat is not expected to initiate any such threat. In the absence of finding that the designation of critical habitat would increase threats to a species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. Here, the potential benefits of designation include: (1) Triggering consultation under section 7 of the Act, in new areas for actions in which there may be a Federal nexus where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential features and areas; (3) providing educational benefits to State or county governments or to private entities; and (4) preventing people from causing inadvertent harm to the species. Therefore, because we have determined that the designation of critical habitat will not likely increase the degree of threat to the species and may provide some measure of benefit, we find that designation of critical habitat is prudent for Georgia rockcress.

Critical Habitat Determinability

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

(i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

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

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where the species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for Georgia rockcress.

Physical or Biological Features

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 within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for Georgia rockcress from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the proposed listing rule published elsewhere in today's **Federal Register**.

Space for Individual and Population Growth and for Normal Behavior

Georgia rockcress is known from the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and the Ridge and Valley Physiographic Provinces (Schotz 2010, p. 6; Allison 1995, p. 6), generally occurring within regions underlain or otherwise influenced by sandstone, granite, and limestone (Moffett 2007, p. 1; Schotz 2010, p. 6). This species occurs on soils that are circumneutral to slightly basic (or buffered) and is primarily associated with high bluffs along major river courses, with dry-mesic to mesic soils of open, rocky, woodland and forested slopes,

including shallow soil accumulations on rocky bluffs, ecotones of sloping rock outcrops, and sandy loam along eroding riverbanks (Moffett 2007, p. 1; Schotz 2010, p. 6). The habitat supports a relatively closed to open canopy of deciduous trees with a rich diversity of grasses and forbs characterizing the herb layer (Schotz 2010, p. iii). Therefore, we identify well-drained soils that are buffered or circumneutral to be a physical or biological feature for this species.

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

Georgia rockcress generally occurs on steep river bluffs often with shallow soils overlaying rock or with exposed rock outcroppings. These edaphic conditions result in micro-disturbances, such as sloughing soils with limited accumulation of leaf litter or canopy gap dynamics, possibly with wind-thrown trees, which provide small patches of exposed mineral soil in a patchy distribution across the river bluff (Schotz 2010, p. 6). Georgia rockcress is a poor competitor (Alison 1995, p. 8; Moffett 2007, p. 4; Schotz 2010 p. 9); therefore, small-scale disturbances are critical for this species. Exposed mineral soil provides for seed to soil contact for good germination and allows Georgia rockcress to occupy habitat with limited competition for light, mineral, and water resources. Therefore, we identify large river bluffs with steep slopes and/or shallow soils that are subject to localized disturbances to be a physical or biological feature for this species.

Cover, Shelter, and Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Georgia rockcress generally occurs at sites with a substantial, mixed-level canopy with spatial heterogeneity, which provides for mixed sunlight and shade throughout the day and impedes invasive species. The habitat supports a relatively closed to open canopy of *Juniperus virginiana* (eastern red cedar), *Ostrya virginiana* (American hophornbeam), *Quercus muehlenbergii (*chinquapin oak), *Fraxinus americana* (white ash), *Acer barbatum* (southern sugar maple), and *Cercis canadensis* (eastern redbud) with a rich diversity of grasses and forbs characterizing the herb layer (Schotz 2010, p. iii). Georgia rockcress generally occurs on sites with a mature canopy providing partial shading (Moffett 2007, p. 4). Although Georgia rockcress can survive deep shade primarily as a vegetative rosette without flowering or fruiting (Alison 1995, p. 7; Moffett 2007, p. 4; Schotz 2010, p. 10), it cannot reproduce in heavily shaded conditions. It is often the mature trees grown on shallow soils that are subject to wind throw. Therefore, we identify a mature, mixed-level canopy with spatial heterogeneity to be a physical or biological feature for this species.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

While Georgia rockcress needs small-scale disturbances to exploit, the species is a poor competitor and is easily outcompeted by aggressive competitors. Natural large-scale disturbances, such as fire and catastrophic flooding, are unlikely to occur on the steep river bluffs occupied by Georgia rockcress. Edge effects may penetrate as far as 175 meters (m) (574 feet (ft)), resulting in changes in community composition (Gehlhausen et al. 2000, p. 21). Aspect is an important factor in determining how forest microclimate and vegetation are influenced by the external environment (Gehlhausen et al. 2000, p. 30) and likely plays an important role on bluff habitat inhabited by Georgia rockcress. Edge effects are reduced by a protective vegetative border with buffers eliminating most microhabitat edge effects (see the proposed listing rule, which appears elsewhere in today's **Federal Register**) (Honu and Gibson 2006, p. 255; Gehlhausen et al. 2000, p. 32). Management strategies for the control of invasive plants should encourage canopy closure of greater than 85 percent for forested stands (Honu and Gibson 2006, p. 255). Therefore, we identify the intact habitat that is buffered to impede the invasion of nonnatives to be a physical or biological feature for this species.

Primary Constituent Elements for Georgia Rockcress

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

The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of Georgia rockcress. We believe the conservation of Georgia rockcress is dependent upon the protection and management of sites where existing populations grow, and the maintenance of normal ecological functions within these sites. Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Georgia rockcress are:

(1) Large river bluffs with steep and/or shallow soils that are subject to localized disturbances that limit the accumulation of leaf litter and competition within the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and Ridge and Valley Physiographic Provinces of Georgia and Alabama.

(2) Well-drained soils that are buffered or circumneutral generally within regions underlain or otherwise influenced by granite, sandstone, or limestone.

(3) A mature, mixed-level canopy with spatial heterogeneity, providing mottled shade and often including species such as eastern red cedar, America hophornbeam, chinquapin oak, white ash, southern sugar maple, and redbud with a rich diversity of grasses and forbs characterizing the herb layer.

(4) Intact habitat with mature canopy and discrete disturbances, buffered by surrounding habitat to impede the invasion of competitors.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographic area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. A fully functioning bluff habitat (i.e., with mature canopy and discrete disturbances) is required to provide the features essential to the conservation of this species and may require special management considerations or protection to reduce the following threats: Land-clearing activities that alter the canopy, including silvicultural management, building of utility lines, structures, roads or bridges; construction of reservoirs that inundate habitat; mining activities; or introduction of invasive species that compete directly with Georgia rockcress. Large-scale disturbances, such as fire or soil-disturbing activities, should be minimized. A mature canopy with spatial heterogeneity should be maintained to impede invasive species while providing an opportunity for localized disturbances as canopy-gap dynamics develop. Invasive species

should be eliminated from the critical habitat units. A mature canopy on the bluffs and a surrounding buffer area will help to exclude nonnatives.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—are essential for the conservation of the species. We are not currently proposing to designate any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species. The 18 proposed critical habitat units capture populations across the known range of the species, providing conservation in five different physiographic provinces in three different river drainages. This effectively protects against the loss of one of the three genetic groups and provides for the expansion of all known genetic groups in each physiographic province. Therefore, we are not currently proposing to designate any areas outside the geographic area occupied by the species.

In preparing this proposed rule, we reviewed and summarized the current information available on Georgia rockcress; 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, recent biological surveys and reports, peer-reviewed literature, and discussions and recommendations from Georgia rockcress experts.

As discussed below, when determining proposed critical habitat boundaries we made every effort to avoid including developed areas such as lands covered by water, buildings, pavement, and other structures because such lands lack physical or biological features for Georgia rockcress. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate critical habitat on lands that we have determined are occupied at the time of listing and contain sufficient elements of physical or biological features to support life-history processes essential for the conservation of the species. Specifically, we are proposing 18 units for designation based on the presence of sufficient elements of physical or biological features to support Georgia rockcress's life-history processes. All of the proposed units contain all of the identified elements of physical or biological features and support all of the life-history processes, at least in the majority of the unit.

We considered several factors in the selection and proposal of specific areas as critical habitat for Georgia rockcress. This especially included the protection of populations throughout the species' range in Georgia and Alabama. Given the extremely small number of total plants (fewer than 5,000 in a given year, 12 of the 18 populations have fewer than 50 plants (Schotz 2010, p. iii; Elmore 2010, pp. 1–4; Moffett 2007, pp. 2–7; Alison 1999, pp. 1–5; Alison 1995, pp. 7–18)), distributed as disjunct populations across five physiographic provinces (Schotz 2010, pp. 9–10; Moffett 2007, pp. 2–7; Alison 1995, pp. 7–18) in three major river systems with each genetically important to the conservation of the species (Garcia 2012, pp. 30–36), we consider all of the known populations located on major river bluffs to be critical habitat for Georgia rockcress. In order to decrease the probability of loss of genetic diversity, extant populations need to be distributed across the range of the species and across all five physiographic provinces.

Our approach to delineating specific proposed critical habitat units focused first on considering all areas of suitable habitat within the geographic distribution of this species and the known locations of the extant and historical 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 Georgia rockcress locations, soils, elevation, topography, geologic formations, streams, and current land uses.

In this way, we determined that 18 populations are essential to the conservation of Georgia rockcress. We then 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. We buffered known populations to maintain intact habitat that would be resistant to invasive species and would provide suitable habitat for expansion of the population when appropriate small-scale disturbances occur. Edges function as sources of propagules for disturbed habitats and represent complex environmental gradients with changes in light availability, temperature, humidity, wind speed, and soil moisture, with plant species responding directly to environmental changes (Meiners et al. 1999, p. 261). Edge effects, including canopy break due to timber harvest, fields, or maintained rights-of-way, may penetrate from 30 m (98 ft) to 175 m (574 ft), resulting in changes in community composition. Nonnatives may invade 30 to 120 m (394 ft), with the greatest prevalence of nonnatives occurring between 10 meters (33 feet) and 30 meters (Honu and Gibson 2006, p. 264; Forman 2002, p. 95; Gehlhausen et al. 2000, p. 21; Meiners et al. 1999, p. 266; Fraver 1994, p. 830). While Gehlhausen (2000, p. 32), suggesting that a protective vegetative buffer strip would eliminate edge effect. Honu and Gibson (2006, p. 264) suggested that a buffer of at least 50 m (164 ft) eliminates most edge effects.

In selecting an area to include as proposed critical habitat, we started from known occurrences and then selected a minimum distance needed to capture sufficient bluff habitat to provide opportunities for plants to migrate across the bluff habitat to take advantage of localized disturbances and to provide a reasonable measure of protection from nonnatives. To capture sufficient bluff habitat vertically (up and down slope) from the river edge to the top of the slope, we buffered known occurrences 76 m (250 ft) up and down slope, because we found that this distance captures most of the physical and biological features of critical habitat, as well as providing a buffer

against nonnatives that will at least exclude the high prevalence range (area most likely to result in invasion by nonnatives), as described by Honu and Gibson (2006, p. 264).

However, the vertical buffering alone does not provide sufficient habitat for plants to migrate across the bluff. Therefore, in the lateral direction along the river, we added an additional distance around occurrences of up to 305 m (1,000 ft). This buffer captures sufficient bluff habitat to provide opportunity for plants to take advantage of localized disturbances.

Based on the known plant distribution, we placed boundaries around the populations that included the plants, as well as their primary constituent elements. We used UTM zone 16N/North American Datum 1983 (NAD 83) coordinates to delineate the boundaries of the proposed critical habitat. In defining these critical habitat boundaries, we made an effort to exclude all developed areas, such as housing developments, open areas, rivers (or lakes), and other lands unlikely to contain the primary constituent elements essential for the conservation of Georgia rockcress. We then evaluated the topography, soils, geology, and canopy cover to identify intact habitat that could buffer against invasive species and provide habitat for future populations. In most cases, habitat that was lacking the primary constituent elements was deemed unsuitable and is not included in the proposed critical habitat polygon. We removed areas from the proposed designated area if they are in the water, had been clear cut, had been converted to pasture, had been converted to a road, had a structure built on them, or had been used as a quarry. We include utility line rights-of-ways because Georgia rockcress will persist in this habitat. While the removal of the canopy for a right-of-way makes the habitat receptive to nonnatives, the ongoing mowing keeps nonnatives from outcompeting Georgia rockcress and allows this species to persist. Starting from the polygon or point data of a Georgia rockcress location and moving down slope, the proposed critical habitat area generally ends at the water's edge.

The 18 units in this proposed designation include the geographic spread of the entire historical range of the species. All proposed units contain the primary constituent elements essential for the conservation of Georgia rockcress (see ''Primary Constituent Elements for Georgia Rockcress,'' above). 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 18 units included in this proposed rule constitutes our best determination of areas essential for the conservation, and eventual recovery, of Georgia rockcress. The 18 units we are proposing as critical habitat encompass approximately 323 hectares (ha) (786 acres (ac)) in Georgia and Alabama.

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

Proposed Critical Habitat Designation

The 18 areas we propose as critical habitat are numbered and provided in Table 1 below. All of the proposed areas are occupied. Except as noted, all of the units contain all of the PCEs and require special management consideration or protection to address the threats (see discussion above) and to ensure their contribution to the conservation of Georgia rockcress. Unit names were derived from reports generated from previous survey efforts (Schotz 2010, pp. 20–57; Moffett 2007, pp. 5–8; Allison 1999, pp. 3–8; Allison 1995, pp. 18–28), to promote continuity with monitoring efforts.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR GEORGIA ROCKCRESS

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

Unit No.	Unit name	County/State	Ownership	Hectares	Acres
1	Fort Tombecbee	Sumter/AL	State	6	14
2	Marshalls Bluff	Monroe/AL	Private	11	27
3	Prairie Bluff	Wilcox/AL	Private	13	32
4	Portland Landing River Slopes	Dallas/AL	Private	12	31
5	Durant Bend	Dallas/AL	Private	12	28
6	Murphys Bluff Bridge Cahaba River	Bibb/AL	Private	11	26
7A	Creekside Glades	Bibb/AL	Private	12	29
7B	Little Schulz Creek	Bibb/AL	Private	12	28
8A	Cottingham Creek Bluff	Bibb/AL	Private	22	55
8B	Pratts Ferry	Bibb/AL	Private	11	28
9A	Fern Glade	Bibb/AL	Federal	14	34
9B	Sixmile Creek	Bibb/AL	Private	13	21
10A	Browns Dam Glade North	Bibb/AL	Private	14	35
10B	Browns Dam Glade South	Bibb/AL	Private	15	37
11	McGuire Ford | Limestone Park	Bibb/AL	Private	6	15
12	Fort Toulouse State Park	Elmore/AL	State	7	17
13	Fort Gaines Bluff	Clay/GA	Private	17	42
14A	Fort Benning (GA)	Chattahoochee/GA	Federal	14	35
14B	Fort Benning (AL)	Russell/AL	Federal	11	26
15A	Goat Rock North	Harris/GA	Private	7	19
15B	Goat Rock South	Harris, Muscogee/GA	Private	24	59
16	Blacks Bluff Preserve	Floyd/GA	Private	37	92
17	Whitmore Bluff	Floyd/GA	Private	17	43

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR GEORGIA ROCKCRESS—Continued

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

Unit No.	Unit name	County/State	Ownership	Hectares	Acres
18	Resaca Bluffs	Gordon/GA	Private	5	13
Total				323	786

Note: Area sizes may not sum due to rounding.

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

Critical Habitat Unit Descriptions

We are proposing a total of 18 critical habitat units for Georgia rockcress located in Georgia, including parts of Chattahoochee, Clay, Floyd, Gordon, Harris, and Muscogee Counties, and in Alabama, including parts of Bibb, Dallas, Elmore, Monroe, Russell, Wilcox, and Sumter Counties. Each proposed critical habitat unit contains all of the PCEs and can accommodate all of the life stages of this species. 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 Georgia rockcress. Areas within the boundaries of the mapped units, such as buildings, roads, clearings, 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 under section 7 of the Act, unless they affect the species or its primary constituent elements in the critical habitat.

Unit 1. Fort Tombecbee, Sumter County, Alabama

The 6 ha (14 ac) Fort Tombecbee unit is approximately 0.5 kilometers (km) (0.3 miles (mi)) northeast of the city of Epes, Alabama, and is owned by the University of West Alabama. This Georgia rockcress occurrence inhabits the crest and steep slopes of a deeply-incised stream bank overlooking a small intermittent creek approximately 91 m (300 ft) upstream from its confluence with the Tombigbee River. Livestock grazing was observed during a visit made in May 2010, in a portion of the site where the species was previously observed; it is conceivable that livestock may have further impacted the occurrence. Only four plants were found in 2010 (Schotz 2010, p. 51). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings and development.

Unit 2. Marshalls Bluff, Monroe County, Alabama

The 11-ha (27-ac) Marshall Bluff unit is a privately owned tract 9.6 km (6 mi) southwest of Perdue Hill, Alabama, on the eastern bank of the Alabama River on a high bluff (Marshalls Bluff) overlooking the Alabama River. An abandoned quarry exists approximately 150 m (500 ft) distant to the east, and while the quarry may have destroyed bluff habitat, the quarry currently poses no threat to the occurrence, and there are no plans to expand the quarry (Schotz 2010, p. 22). More than 400 plants were found in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with mining.

Unit 3. Prairie Bluff, Wilcox County, Alabama

Privately owned, the 13-ha (32-ac) Prairie Bluff unit is located along the banks of the Millers Ferry (William ''Bill'' Dannelly) Reservoir, approximately 1.6 km (1 mi) north of the Lee Long Bridge on State Route 28. Georgia rockcress is scattered along the bluffs and ravines associated with the Alabama River. Nonnative species, most notably *Ligustrum sinense* (Chinese privet) and *Lonicera japonica* (Japanese honeysuckle), threaten this site (Alison 1999, p. 2; Schotz 2010, pp. 54–55). More than 500 plants were found in this unit in 2010; however, some habitat was likely inundated by the reservoir. This site is slated for residential development with lakeside lots, and the infestation of nonnatives will likely become worse. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, development, hydropower, and nonnative species.

Unit 4. Portland Landing River Slopes, Dallas County, Alabama

Privately owned, the 12-ha (31-ac) Portland Landing River Slopes unit is located 18 km (11.5 mi) south of Orrville, Alabama, on the south side of the Alabama River at Portland Landing. This occurrence of Georgia rockcress is restricted to the unstable, highly erodible, sandy soils along the bank of the Alabama River. Nonnatives most notably *Melia azedarach* (Chinaberry or bead-tree), Japanese honeysuckle, and *Pueraria montana* var. *lobata* (kudzu) are present, and although not severe, these nonnatives will persist without active management (Schotz 2010, p. 40). In 2010, 498 Georgia rockcress plants were recorded (Schotz 2010, p. 40). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest, hydropower, and nonnative species.

Unit 5. Durant Bend, Dallas County, Alabama

Privately owned, the 12-ha (28-ac) Durant Bend unit occurs 16 km (10 mi.) east of Selma in a sharp bend on the Alabama River. Fewer than 50 plants were reported in sandy alluvium along the Alabama River under a partially open to filtered canopy in 2010 (Schotz 2010, p. 37). While the majority of plants occur in forested conditions, a small number of plants were observed in relatively open and exposed soils of actively eroding sections of the riverbank. Nonnatives, including Chinese privet and Japanese honeysuckle, are present but not severe. Timber harvesting has recently taken place approximately 46 m (150 ft) north of the site, but it currently has not impacted species' viability or habitat integrity (Schotz 2010, p. 37). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 6. Murphys Bluff Bridge Cahaba River, Bibb County, Alabama

Privately owned, the 11-ha (26-ac) Murphys Bluff Bridge Cahaba River unit is 11.4 km (7 mi) southwest of Centreville, Alabama, and located along the west bank of the Cahaba River downstream (southwest) of the Murphy Road Bridge. Chinese privet, Japanese honeysuckle, and other nonnatives are present, but are relatively sparse. Infestation of nonnative plants could worsen. Timber harvesting has been observed nearby and may pose a potential concern (Schotz 2010, p. 22). Sixteen Georgia rockcress plants were found at this location during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings and nonnative species.

Unit 7A. Creekside Glades, Bibb County, Alabama

Privately owned, the 12-ha (29-ac) Creekside Glades subunit is located 9.6 km (6 mi) north-northeast of Centreville, Alabama, along the banks of Little Schultz Creek. Georgia rockcress occurs in association with a small dolomite glades complex on either side of Little Schultz Creek. The plants (mostly rosettes, i.e., non-reproductive) predominantly occur in the ecotone of the glades and the encompassing woodland, in association with a mix of shrubs and low-growing trees. A smaller number of individuals (mostly mature) can be found in the glades and surrounding woodlands (Alison 1999, p. 2; Schotz 2010, p. 30). This subunit contained 42 plants in 2010. A utility line right-of-way passes through this subunit, and while there is no canopy on the right-of-way, it provides essential supporting habitat such that the right-of-way has not been excluded from critical habitat. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with development and utility right-of-way maintenance.

Unit 7B. Little Schulz Creek, Bibb County, Alabama

Privately owned, the 12-ha (28-ac) Little Schulz Creek subunit is located 8.9 km (5.5 mi) north-northeast of Centreville, Alabama. In 2010, 29 plants occurred on limestone outcrops along the west bank of the Cahaba River. The site is characterized as a bouldery limestone woodland situated along a low bluff overlooking the Cahaba River. Georgia rockcress inhabits shallow soils associated with the bluff, occurring under an open to lightly shaded canopy (Schotz 2010, p. 32). This subunit consisted of 29 plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with development and utility right-of-way maintenance.

Unit 8A. Cottingham Creek Bluff and Unit 8B. Pratts Ferry, Bibb County, Alabama

Privately owned, the Cottingham Creek Bluff subunit is located on the east side of the Cahaba River, upstream of Pratts Ferry Bridge, 10 km (6.2 mi) northeast of Centreville, Alabama. The Pratts Ferry subunit is located on the west side of the Cahaba River, downstream of Pratts Ferry Bridge, 10 km (6.2 mi) northeast of Centreville, Alabama. A small portion (26 percent (5.88 ha (14.5 ac)) of the Cottingham Creek Bluff subunit is owned by The Nature Conservancy (TNC). A small number of plants are confined to an abandoned limestone quarry several hundred feet back from the southeastern side of the river's edge. Chinese privet and Japanese honeysuckle impact this site, particularly in the vicinity of the abandoned quarry. Nonnatives could become worse. Timber harvesting is of potential concern in an area adjacent to the population on the west side of the Cahaba River, which was selectively logged in the 1990s (Alison 1999, p. 3; Schotz 2010, pp. 34–35). Subunit 8A is 22 ha (55 ac), and subunit 8B is 11 ha (28 ac). In 2010, these two units together contained 299 Georgia rockcress plants. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats associated with road crossings, timber harvest, and nonnative species.

Unit 9A. Fern Glade, Bibb County Alabama

The 14-ha (34-ac) Fern Glade subunit is centered near the confluence of the Little Cahaba River and Sixmile Creek approximately 14.2 km (8.9 mi) northeast of Centreville, Alabama. Twelve percent of the Fern Glade subunit (4.2 ha (1.7 ac)) is owned by TNC, and 79 percent (10.9 ha (27 ac)) of this subunit is part of the Cahaba National Wildlife Refuge. A moderate incursion of invasive Chinese privet and Japanese honeysuckle occurs at this site. Nonnatives will likely become worse (Alison 1999, p. 3; Schotz 2010, p. 26). A small glade on the north side of the Little Cahaba River had 81 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 9B. Sixmile Creek, Bibb County, Alabama

Privately owned, the Sixmile Creek subunit is located 13.7 km (8.5 mi) northeast of Centreville, 0.8 km (0.5 mi) upstream on Sixmile Creek from its confluence with the Little Cahaba River. The majority of this subunit (96.6 percent or 8.2 ha (20.3 ac)) is proposed for acquisition by TNC in 2013. This population of Georgia rockcress is on the west side of Sixmile Creek. In a relatively isolated site, Georgia rockcress occupies the upper slope and summit of a steep forested bluff overlooking Sixmile Creek. This 13-ha (21 ac) subunit had 59 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 10A. Browns Dam Glade and Unit 10B. Browns Dam Glade 2, Bibb County, Alabama

Privately owned, the Browns Dam Glade subunits are located 15.8 km (9.8 mi) northeast of Centreville, Alabama, on both sides of the Little Cahaba River. Subunit 10A is on the north side of the river, and subunit 10B is in a sharp bend on the south side of the River. More than 96 percent of subunit 10A (13.7 ha (33.8 ac)) and all of subunit 10B are owned by TNC. A combination of open woodland and dolomitic glades characterize the site. An infestation of nonnatives, most notably Chinese privet, occurs at this unit. This site serves as a primitive recreation area for local residents, resulting in some trash disposal and the construction of fire pits (Alison 1999, p. 5; Schotz 2010, pp. 24–25). Subunits 10A and 10B are 14 ha (35 ac) and 15 ha (37 ac), respectively. A complex of dolomitic glades and associated woodlands along both sides of the Little Cahaba River contained 71 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or

protection to address threats associated with nonnative species.

Unit 11. McGuire Ford/Limestone Park, Bibb County, Alabama

Privately owned, the McGuire Ford/Limestone Park unit is located 18.7 km (11.6 mi) northeast of Centreville, Alabama, on the southeast side of the Little Cahaba River. A small number of plants occupy shallow soils of low, rocky limestone outcrops along the Little Cahaba River under a lightly shaded canopy of eastern red cedar, chinquapin oak, white ash, Southern sugar maple, and redbud, among others (Alison 1999, p. 5; Schotz 2010, p. 20). This 6-ha (15-ac) unit contained 50 Georgia rockcress plants during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, development, and maintenance of a field.

Unit 12. Fort Toulouse State Park, Elmore County, Alabama

State-owned, the Fort Toulouse State Park unit is located 16 km (10 mi) north of Montgomery, Alabama, on the south side of the Coosa River. Georgia rockcress is widely scattered along the bluffs overlooking the Coosa River, primarily occupying mesic, sandy soils of upper slopes and crest. Japanese honeysuckle is beginning to severely impact many areas of the site (Alison 1999, p. 2; Schotz 2010, p. 42). This 7-ha (17-ac) unit contained 47 Georgia rockcress plants during the 2010 survey. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with maintenance of a field and nonnative species.

Unit 13. Fort Gaines Bluff, Clay County, Georgia

Privately owned, the Fort Gaines Bluff unit is located 1.5 km (0.9 mi) south of Fort Gaines, Georgia, on the Chattahoochee River. This high, steep, eroding river bank has sandy loam soils and an intact hardwood overstory. Japanese honeysuckle has become severe over much of area (Alison 1995, pp. 18–29; Moffett 2007, p. 9). This 17-ha (43-ac) unit contained 84 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 14A. Fort Benning (GA), Chattahoochee County, Georgia

Federally owned, the Fort Benning (GA) subunit is 17.9 km (11.1 mi) south of Columbus, Georgia, on the Chattahoochee River, near its confluence with Oswichee Creek. The plants occupy the bluff and associated steep forested slopes along the Chattahoochee River, where they inhabit loamy, sandy soils under a partially open to filtered canopy of various hardwoods. Japanese honeysuckle is adversely affecting this site with an infestation of autumn olive (*Elaeagnus umbellata*) in the woodland habitat on top of the bluff (Alison 1995, pp. 19–20; Allison 1999, p. 1; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3). Fort Benning has not completed an integrated natural resources management plan (INRMP) that addresses this species or its habitat (see Exemptions, below, for more details). This 14-ha (35-ac) subunit contained more than 850 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with nonnative species.

Unit 14B. Fort Benning (AL), Russell County, Alabama

Federally owned, the Fort Benning (AL) subunit is 21 km (13 mi) south of Columbus, Georgia, on the Chattahoochee River, across from the confluence of Red Mill Creek. An exceptionally vigorous occurrence, the site contains the greatest number of plants of any site in Alabama, and likely represents one of the highest quality examples known for the species rangewide. The plants occupy the bluff and associated steep forested slopes along the Chattahoochee River with loamy, sandy soils under a partially open to filtered canopy of various hardwoods. Japanese honeysuckle and Chinese privet are adversely affecting this site (Alison 1999, p. 1; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3; Schotz 2010, pp. 48–49). This 11-ha (26-ac) subunit contained more than 800 Georgia rockcress plants in 2010. The physical or biological features essential to the conservation of the species in this subunit may require special management considerations or protection to address threats associated with roads and nonnative species.

Unit 15A. Goat Rock North and Unit 15B. Goat Rock South, Harris and Muscogee Counties, Georgia

Privately owned, the Goat Rock Dam is 18.5 km (11.5 mi) north of Columbus Georgia. The Goat Rock North subunit is immediately north of Goat Rock Dam on the banks of Goat Rock impoundment, while the Goat Rock South subunit is immediately downstream of Goat Rock Dam along the high bluffs overlooking the Chattahoochee River. All of Goat Rock North subunit and the majority of the Goat Rock South subunit are owned by a cooperation that supports conservation efforts for Georgia rockcress. The corporately owned property is provided modest protection in the shoreline management plan, which was developed during Federal Energy Regulatory Commission (FERC) licensing (FERC 2004, pp.29–30). However, the southernmost portion of the Goat Rock South subunit is privately owned. This high rocky bluff is mostly covered by a mature canopy of trees. A narrow portion of this habitat has a transmission line passing over the top where all woody species have been removed; however, Georgia rockcress plants are scattered in the transmission line right-of-way. This area contains PCEs 1 and 2. Nonnative species, including Chinese privet and Japanese honeysuckle, have severely impacted this site (Alison 1995, pp. 24–27; Moffett 2007, pp. 6–9). Conservation actions here have included invasive species/woody competition removal (both manually and chemically) to benefit existing Georgia rockcress plants, and prescribed burning to open up new adjacent sites for outplanting enhancement. The Chattahoochee Nature Center (CNC) outplanted approximately 300 Georgia rockcress plants of the Goat Rock genotype at this site in 2008. The local office of TNC has also expressed interest in possibly including this site in their long-range ecosystem planning (Elmore 2010, pp. 1–3). Subunits 15A and 15 B are 7 ha (19 ac) and 24 ha (59 ac), respectively. In 2007, approximately 1,000 Georgia rockcress plants were found scattered across these subunits. The physical or biological features essential to the conservation of the species in these subunits may require special management considerations or protection to address threats associated with hydropower, utility line maintenance, and nonnative species.

Unit 16. Blacks Bluff Preserve, Floyd County, Georgia

Privately owned, the 37 ha (92 ac) Blacks Bluff Preserve unit is located 6.5

km (4.0 mi) southwest of Rome, Georgia, on the Coosa River. Blacks Bluff is in private ownership with a conservation easement on the property. There were 27 Georgia rockcress plants reported on this site in 1995; however, the presence of nonnative species has since extirpated all Georgia rockcress from this site. The Georgia Plant Conservation Alliance (GPCA) and TNC agreed to bolster the existing population with plants grown from seed collected at the two nearby (Ridge and Valley physiographic province) populations, Whitmore Bluff, and Resaca Bluffs. The CNC collected seed and grew 35 plants from Whitmore Bluff and 65 plants from Resaca Bluffs. In 2008, 100 Georgia rockcress plants were planted in this unit, with 84 Georgia rockcress surveyed on this site in 2011 (Goldstrohm 2011, p. 1). This steep bluff with limestone ledges and boulders has a mature deciduous canopy. Multiple sources of disturbance, including an abandoned quarry, have impacted this site and resulted in the establishment of many nonnative species, including Japanese honeysuckle and Nepalese browntop (Alison 1995, pp. 19–20; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3). The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with roads, mining, and nonnative species.

Unit 17. Whitmore Bluff, Floyd County, Georgia

Privately owned, the 17-ha (43-ac) Whitmore Bluff unit is located 6.5 km (4 mi) northeast of Rome, Georgia, on the east bank of the Oostanaula River. This steep bluff with limestone boulders has a mature canopy with *Ulmus alata* (winged elm), *Quercus montana* (chestnut oak), and *Fraxinus americana* (white ash), and an understory including *Hydrangea arborescens* (wild hydrangea), *Toxicodendron radicans* (poison ivy), and *Sedum ternatum* (woodland stonecrop). Japanese honeysuckle has severely impacted this site (Alison 1995, p. 21; Moffett 2007, pp. 6–9; Elmore 2010, pp. 1–3). Sixty-three rockcress plants were documented in this unit in 1995, but only 12 in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with timber harvest and nonnative species.

Unit 18. Resaca Bluffs, Gordon County, Georgia

Privately owned, the 5-ha (13-ac) Resaca Bluffs unit is located 0.8 km (0.5 mi) southwest of Resaca, Georgia, immediately east of I–75 along the northern bank of the Oostanaula River. A rocky limestone bluff with a mature canopy, including eastern red cedar, *Quercus nigra* (water oak), *Quercus velutina* (black oak), winged elm, white ash, southern sugar maple, and redbud. Nonnative species, including Chinese privet and Japanese honeysuckle, have severely impacted this site (Alison 1995, pp. 22–23; Moffett 2007, pp. 5–9; Elmore 2010, pp. 1–3). This unit contained 51 plants in 1995, and 42 in 2010. The physical or biological features essential to the conservation of the species in this unit may require special management considerations or protection to address threats associated with road crossings, development, and nonnative species.

Effects of Critical Habitat Designation

Section 7 Consultation

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

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

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

Application of the ''Adverse Modification'' Standard

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

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

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

(1) Actions that would significantly alter the canopy. Such activities could include, but are not limited to, silvicultural management, construction of utility lines, creation of pasture or maintained lawn, construction of buildings, and construction of roads or bridges. Invasive species should be precluded from the critical habitat units. A mature canopy on the bluffs and a surrounding buffer area will help to preclude nonnative and invasive species. Activities that alter the canopy could alter the natural canopy gap dynamic that provides Georgia rockcress a competitive advantage and result in direct or cumulative adverse effects to these individuals and their life cycles.

(2) Actions that would inundate habitat. Construction of a dam downstream of a critical habitat unit could result in the loss of habitat. These activities could alter the functioning bluff habitat and result in direct or cumulative adverse effects to these individuals and their life cycles.

(3) Actions that would significantly alter the soil. Such activities could include, but are not limited to, construction of roads or bridges, construction of buildings (e.g., dams, residential housing, or commercial buildings), and mining activities. These activities would permanently alter the soil that Georgia rockcress is dependent on to complete its life cycle.

Exemptions

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

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

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for Georgia rockcress to determine if the lands are exempt under section 4(a)(3) of the Act. In 2001, Fort Benning completed its Service-approved INRMP. The installation is currently revising its INRMP to include specific measures for the Georgia rockcress and its habitat. The revised INRMP is expected by July 2014. Therefore, we are notifying the public that this area is being considered for an exemption from the final designation based on the revised approved INRMP.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the

Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Economic Analysis

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Ecological Services Office in Athens, Georgia, directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. In preparing this proposal, we are considering exemption of lands owned and managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

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

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides a conservation benefit for the species and its habitat;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We are unaware of any plans meeting these criteria; however, we request public comment related to existing plans. At this time, we are not considering the exclusion of any areas from the proposed critical habitat for Georgia rockcress.

Peer Review

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

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

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as

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 forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be both significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the agency is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies would be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service certifies that the proposed critical habitat rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

In conclusion, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat, if adopted as proposed, would only directly regulate Federal agencies, which are not by definition small business entities. As such, we certify that, if promulgated, this designation of critical habitat will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Two proposed subunits, 7A (Creekside Glades) and 15B (Goat Rock South), have major transmission lines passing through them. However, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. The regular mowing and maintenance of these subunits will not destroy existing populations of Georgia rockcress at these sites. In fact, nonnative species will persist in these subunits, but regular mowing will prevent nonnatives from overtopping and out-competing Georgia rockcress. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

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

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

(2) We do not believe that this rule would significantly or uniquely affect small governments. The government-owned lands being proposed as critical habitat are owned by the State of Alabama, the Department of Defense, and the Department of the Interior. None of these government entities meets

the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Georgia rockcress in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for Georgia rockcress does not pose significant takings implications. However, we will further evaluate this issue as we develop our final designation, and review and revise this assessment as warranted.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Alabama and Georgia. We are not currently proposing any unoccupied areas. The designation of critical habitat in areas currently occupied by the Georgia rockcress would impose no additional restrictions to those that would be put in place by listing the species and, therefore, would have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

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

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the Georgia rockcress within the designated areas to assist the public in understanding the habitat needs of the species.

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

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

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

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

Clarity of the Rule

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

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

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2013–0030 and upon request from the Field Supervisor, Ecological Services Office in

Athens, Georgia (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rulemaking are the staff members of the Ecological Services Office in Athens, Georgia.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.96, amend paragraph (a) by adding an entry for ''*Arabis georgiana* (Georgia rockcress)'' in alphabetical order under Family Brassicaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Arabis Georgiana* (Georgia Rockcress)

(1) Critical habitat units are depicted in Georgia, including Chattahoochee, Clay, Gordon, Floyd, Harris, and Muscogee Counties, and in Alabama, including Bibb, Dallas, Elmore, Monroe, Russell, Sumter, and Wilcox Counties, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Arabis georgiana* (Georgia rockcress) consist of four components:

(i) Large river bluffs with steep and/or shallow soils that are subject to localized disturbances that limit the accumulation of leaf litter and competition within the Lower Gulf Coastal Plain, Upper Gulf Coastal Plain, Red Hills, Black Belt, Piedmont, and Ridge and Valley Physiographic Provinces of Georgia and Alabama.

(ii) Well-drained soils that are buffered or circumneutral generally within regions underlain or otherwise influenced by granite, sandstone, or limestone.

(iii) A mature, mixed-level canopy with spatial heterogeneity, providing mottled shade and often including species such as *Juniperus virginiana* (eastern red cedar), *Ostrya virginiana* (American hophornbeam), *Quercus muehlenbergii (*chinquapin oak), *Fraxinus americana* (white ash), *Acer barbatum* (southern sugar maple), and *Cercis canadensis* (eastern redbud) with a rich diversity of grasses and forbs characterizing the herb layer.

(iv) Intact habitat with mature canopy and discrete disturbances, buffered by surrounding habitat to impede the invasion of competitors.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining critical habitat map units were created using GIS shapefiles of Natural Heritage Element Occurrence (EO) data for *Arabis georgiana* (Georgia rockcress) locations that were provided by the Alabama Department of Conservation and Natural Resources and the Georgia Department of Natural Resources, and 1-meter resolution National Agricultural Imagery Program (NAIP) images from 2009. Each EO feature was buffered by 76 m (250 ft) up and down slope and 304.8 m (1,000 ft) laterally. The 76-m (250-ft) buffer was used as a guideline for delineating critical habitat upslope and downslope of the EO feature, with the downslope direction extending 76 m (250 ft) or to the edge of the water, whichever was shorter. The 304.8-m (1,000-ft) buffer was used a guideline for delineating critical habitat adjacent to the EO features along the length of the river. The critical habitat polygons were manually drawn using a mouse on a computer screen by visually checking for PCEs within the buffer areas against 2009 NAIP imagery. The critical habitat polygons were then viewed over the ArcGIS basemap Bing Aerial Imagery as an additional assessment tool for the placement of the critical habitat polygon boundaries. Critical habitat units were mapped using Universal Transverse Mercator (UTM), zone 16N. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's Internet site at *http://www.fws.gov/athens/,* at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2013–0030, and at the Ecological Services Office in Athens, Georgia. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index maps of critical habitat units for *Arabis georgiana* (Georgia rockcress) follow:

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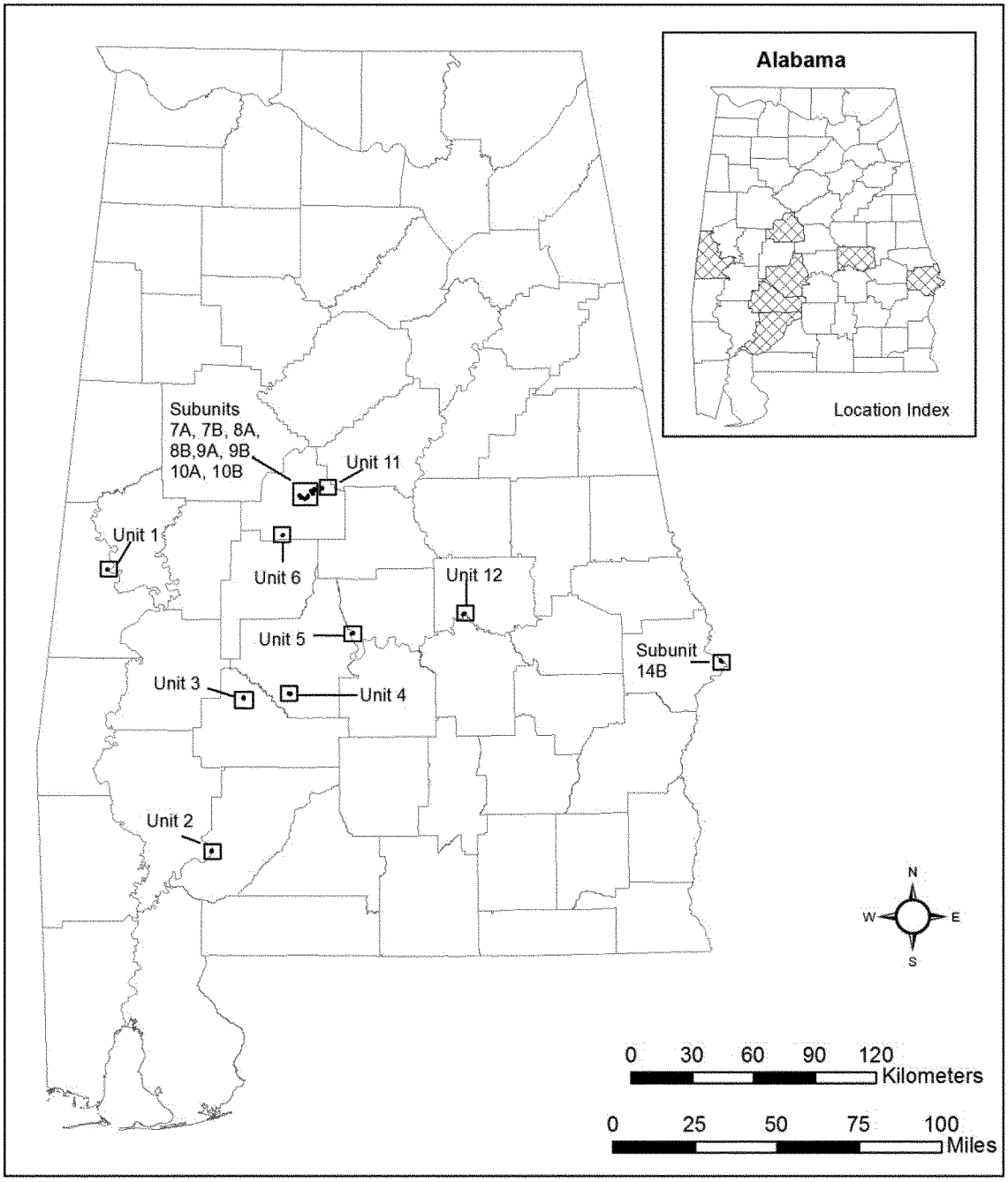
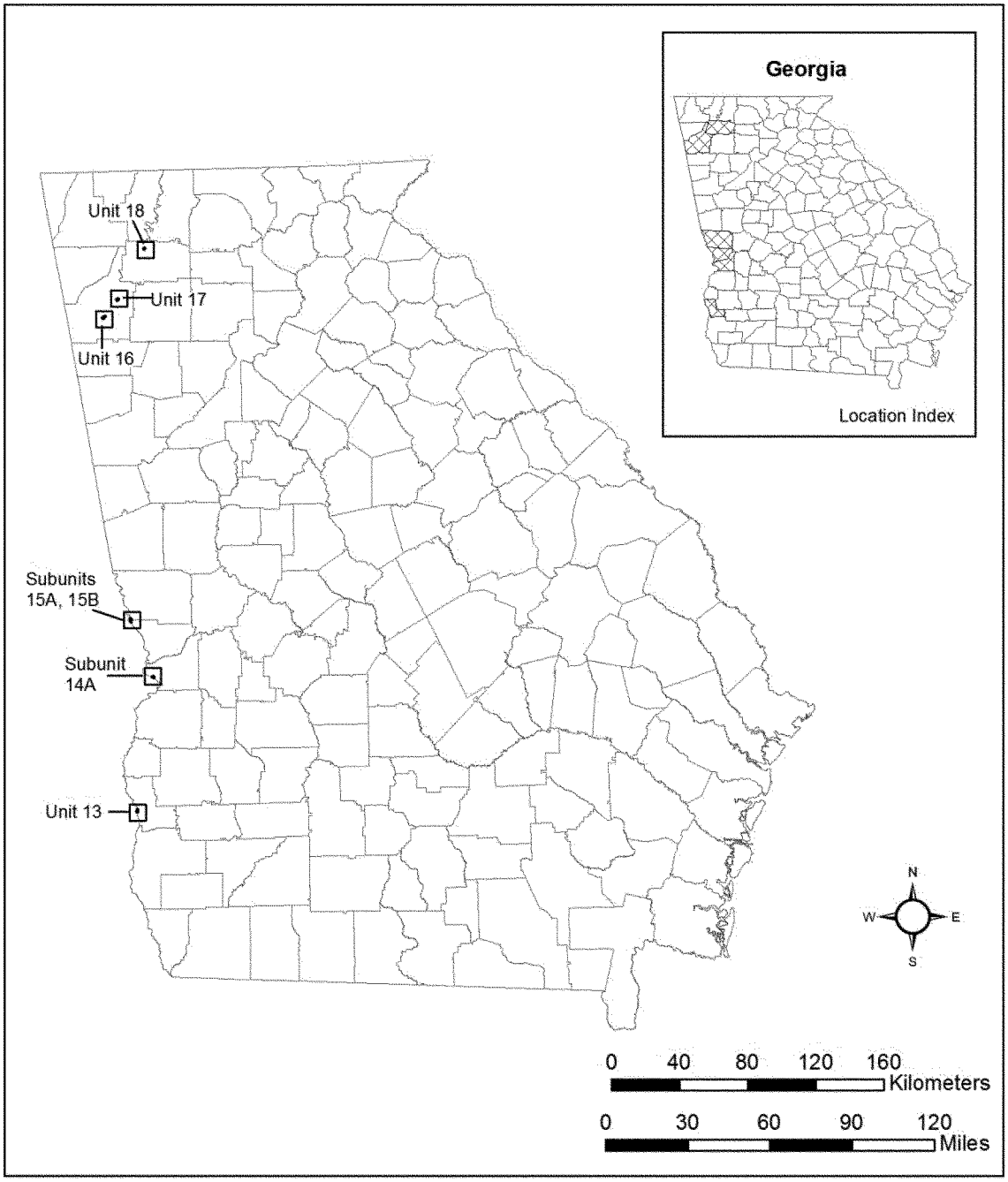
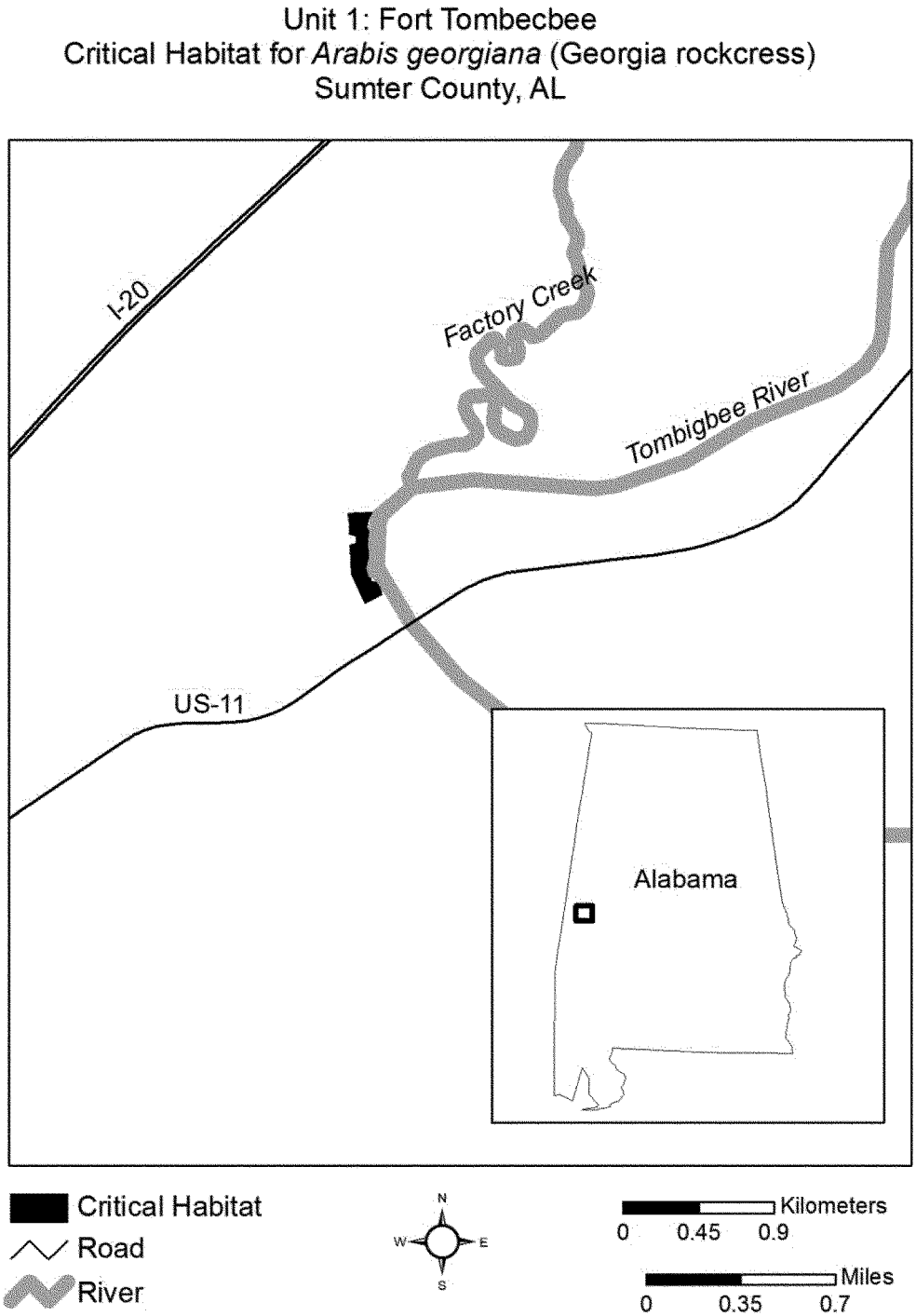
Georgia rockcress Critical Habitat Units, Alabama



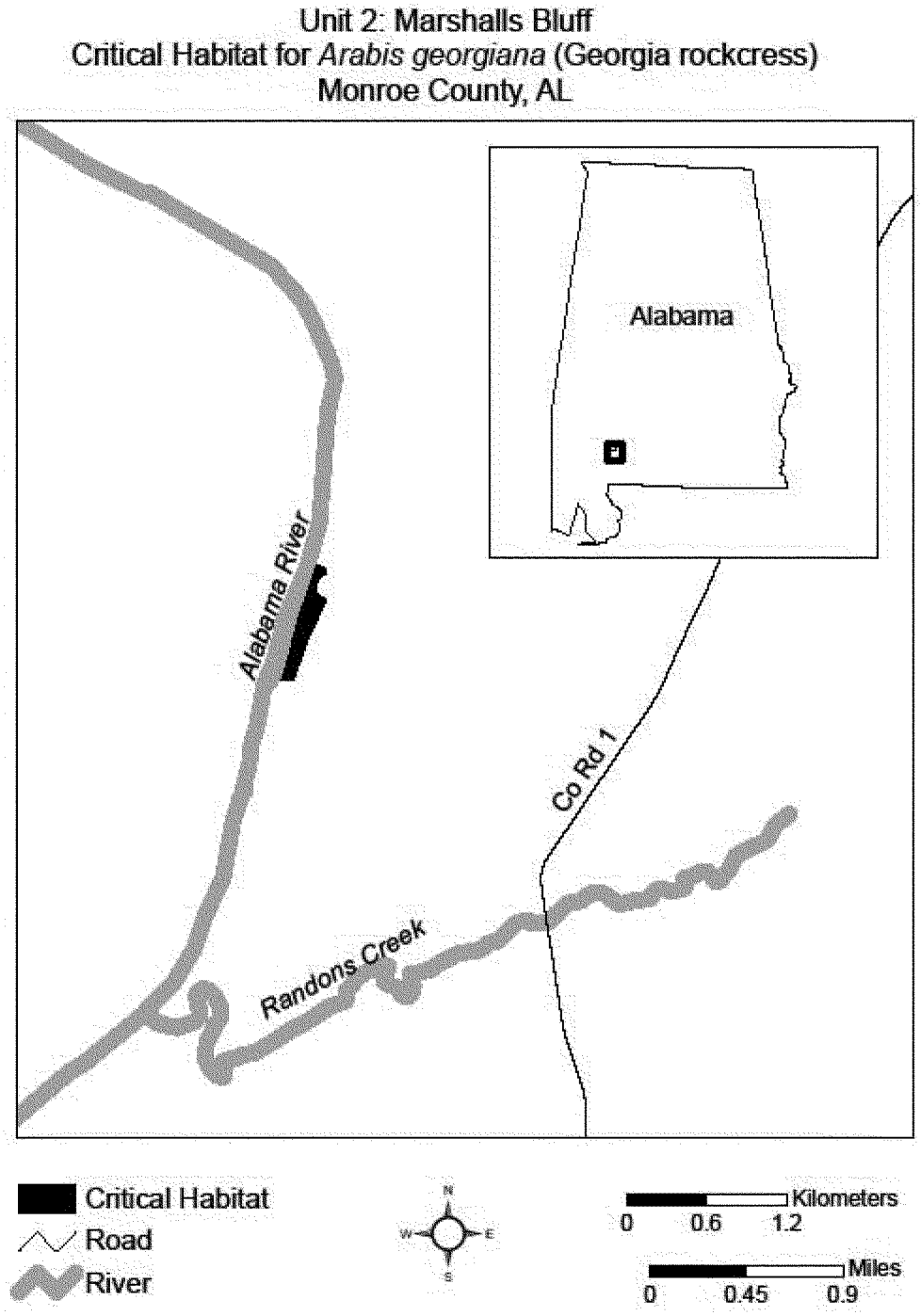
Georgia rockcress Critical Habitat Units, Georgia



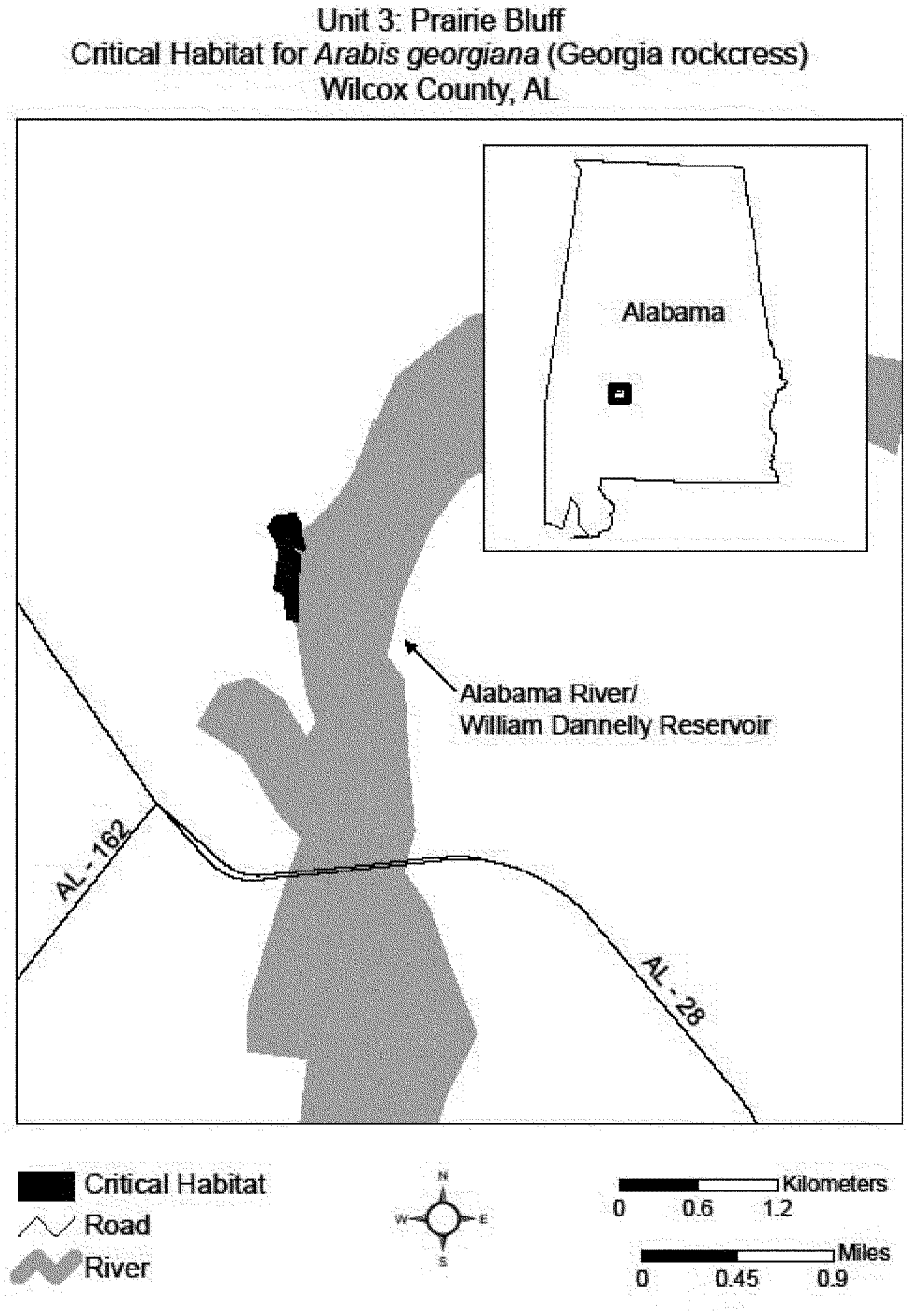
(6) Unit 1: Fort Tombecbee, Sumter County, Alabama. Map of Unit 1 follows:



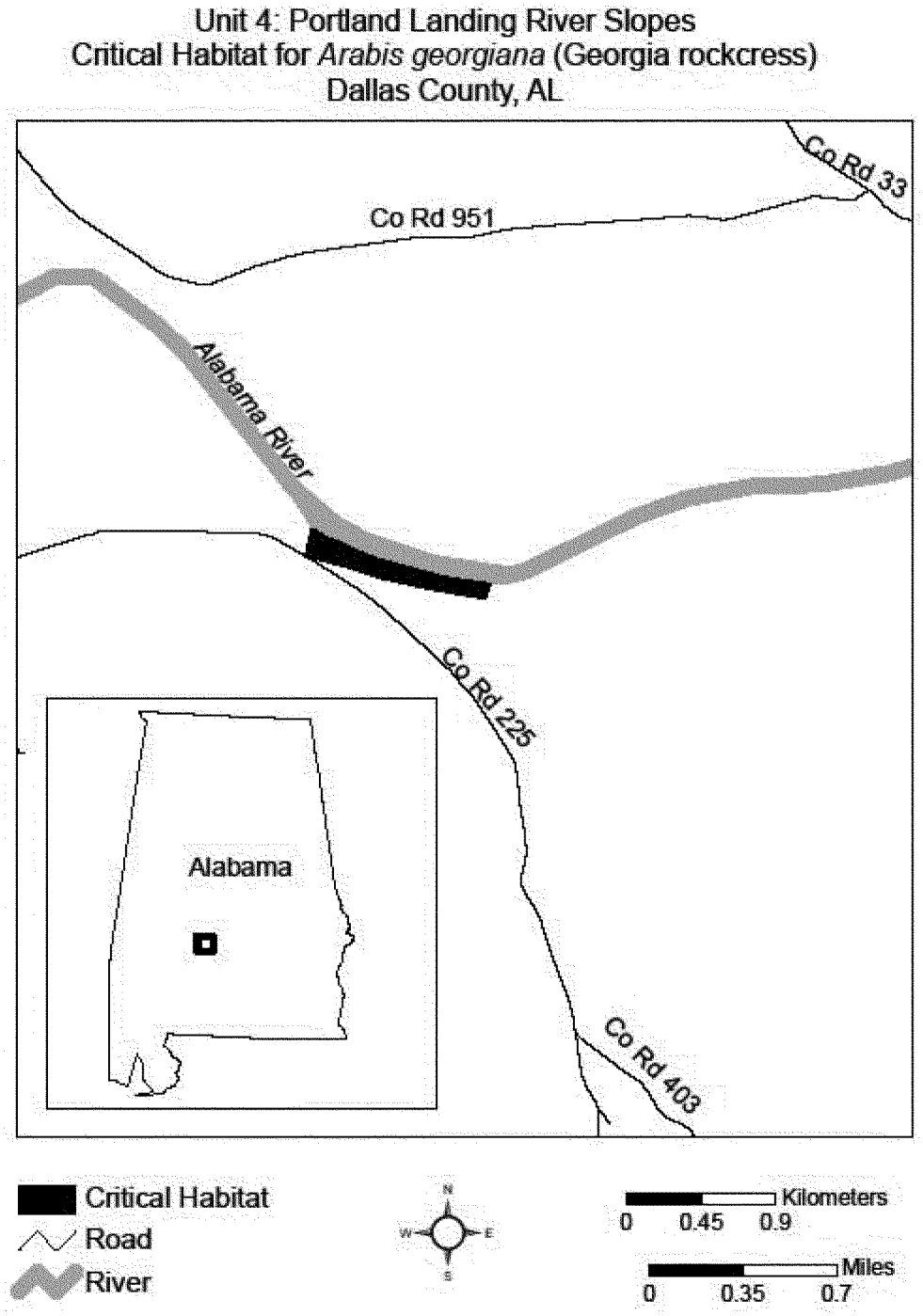
(7) Unit 2: Marshalls Bluff, Monroe County, Alabama. Map of Unit 2 follows:



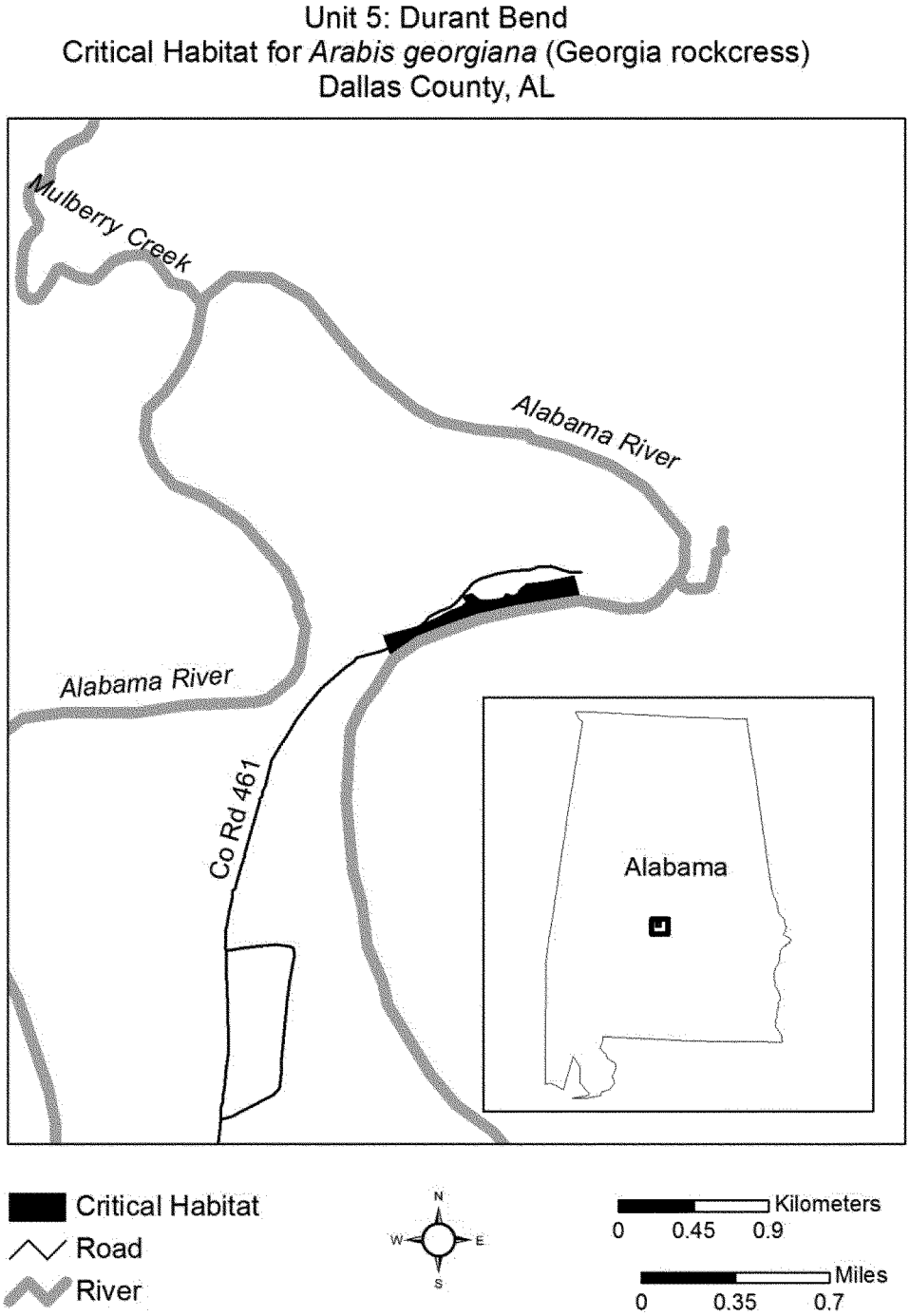
(8) Unit 3: Prairie Bluff, Wilcox County, Alabama. Map of Unit 3 follows:



(9) Unit 4: Portland Landing River Slopes, Dallas County, Alabama. Map of Unit 4 follows:

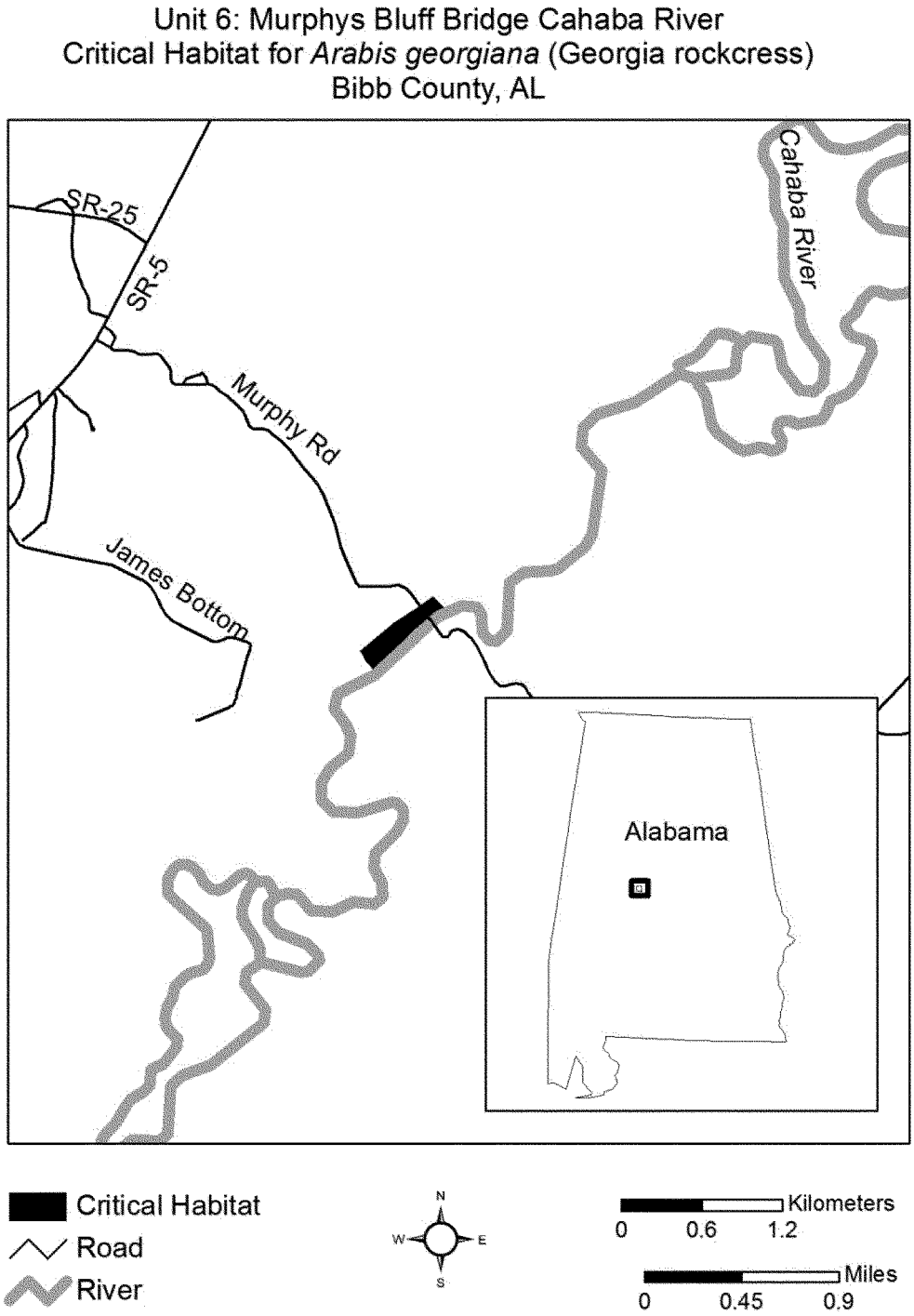


(10) Unit 5: Durant Bend, Dallas County, Alabama. Map of Unit 5 follows:

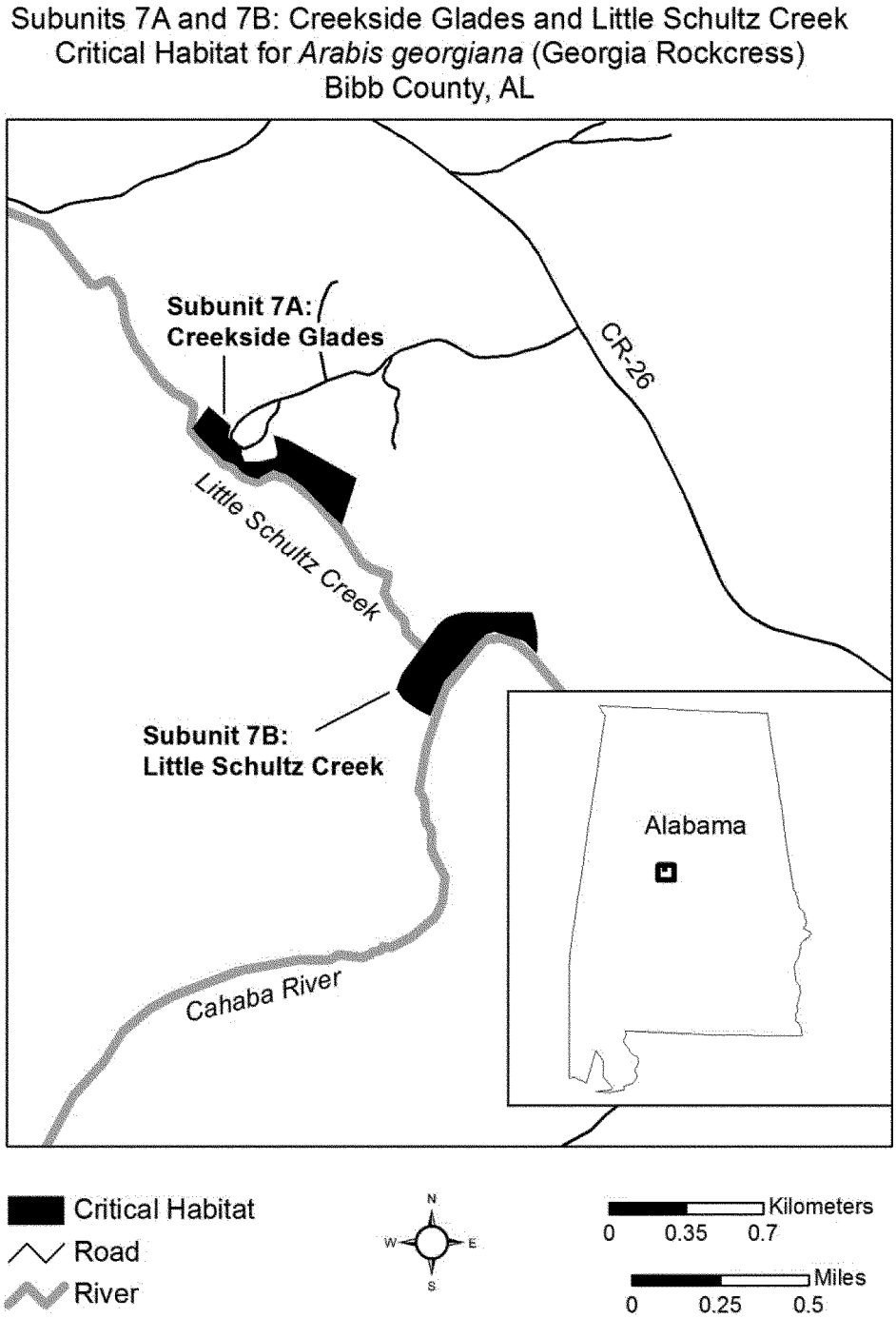


(11) Unit 6: Murphys Bluff Bridge Cahaba River, Bibb County, Alabama.

Map of Unit 6 follows:



(12) Unit 7, Bibb County, Alabama.
(i) Subunit 7A: Creekside Glades.
(ii) Subunit 7B: Little Schultz Creek.
(iii) Map of Subunits 7A and 7B follows:



(13) Unit 7B: Little Schultz Creek, Bibb County, Alabama. Map of Subunits 7A and 7B is provided in paragraph (12) of this entry.

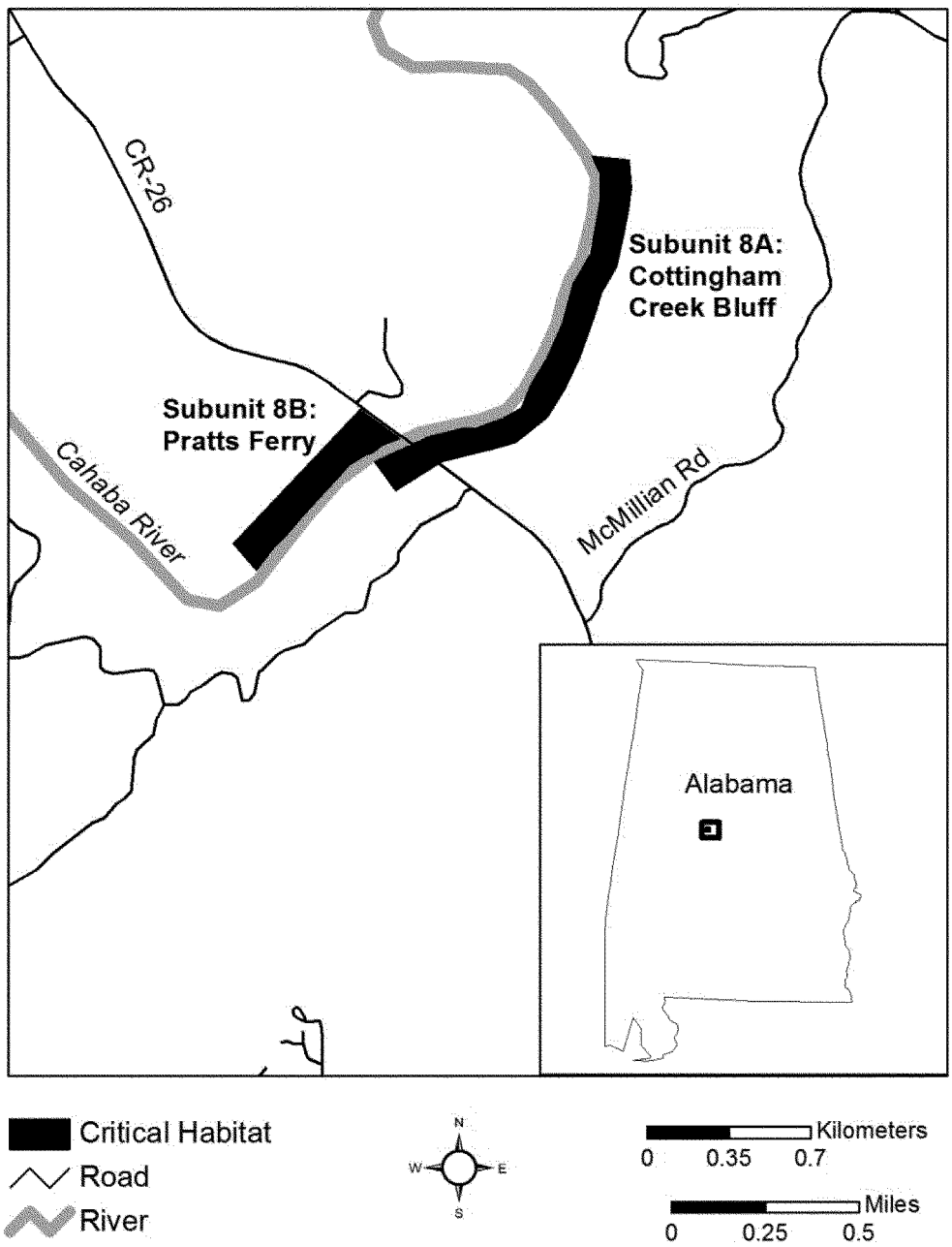
(14) Unit 8, Bibb County, Alabama.

(i) Subunit 8A: Cottingham Creek Bluff.

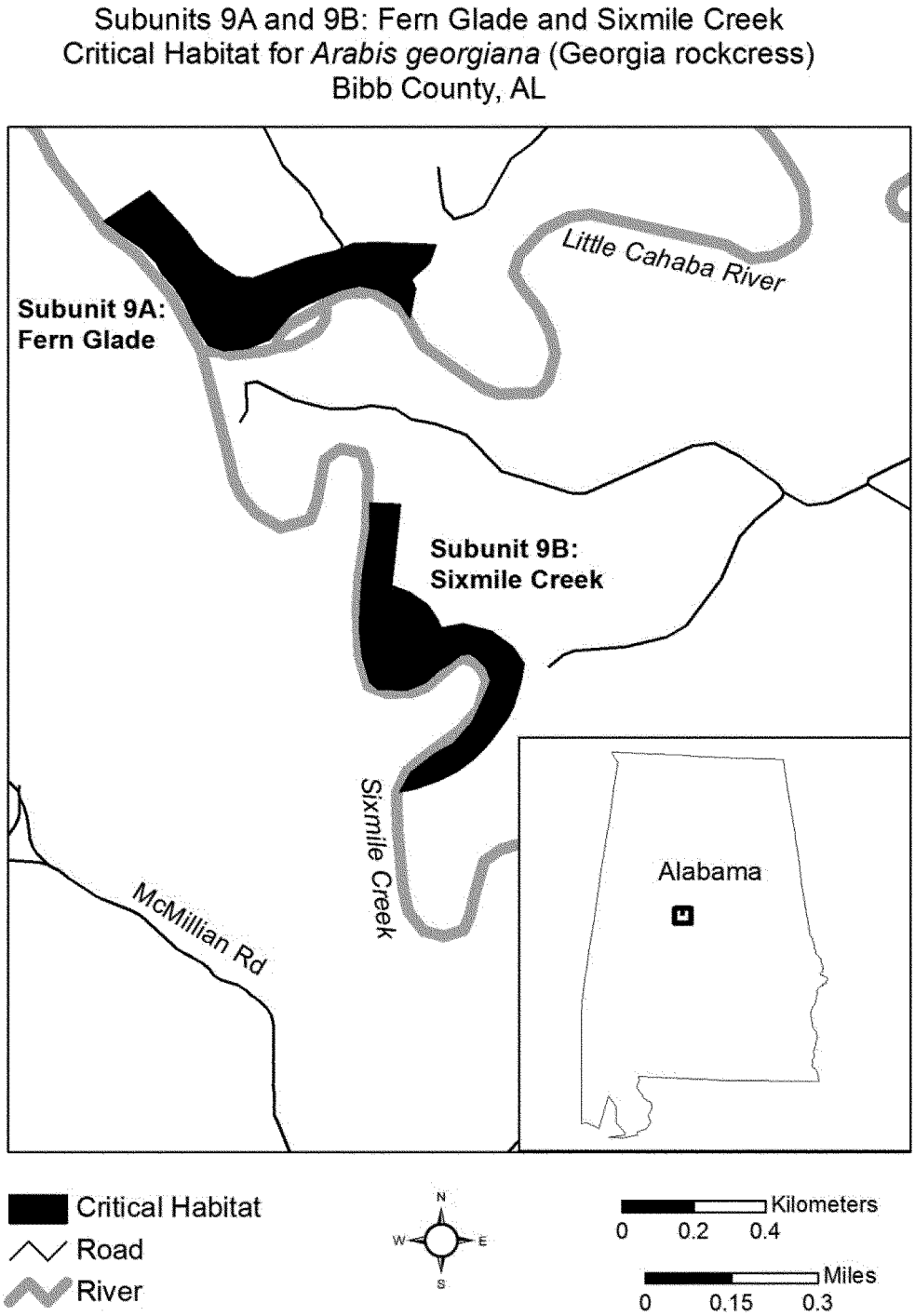
(ii) Subunit 8B: Pratts Ferry.

(iii) Map of Subunits 8A and 8B follows:

Subunits 8A and 8B: Cottingham Creek Bluff and Pratts Ferry
Critical Habitat for *Arabis georgiana* (Georgia rockcress)
Bibb County, AL



(15) Unit 9, Bibb County, Alabama.
(i) Subunit 9A: Fern Glade.
(ii) Subunit 9B: Sixmile Creek.
(iii) Map of Subunits 9A and 9B follows:



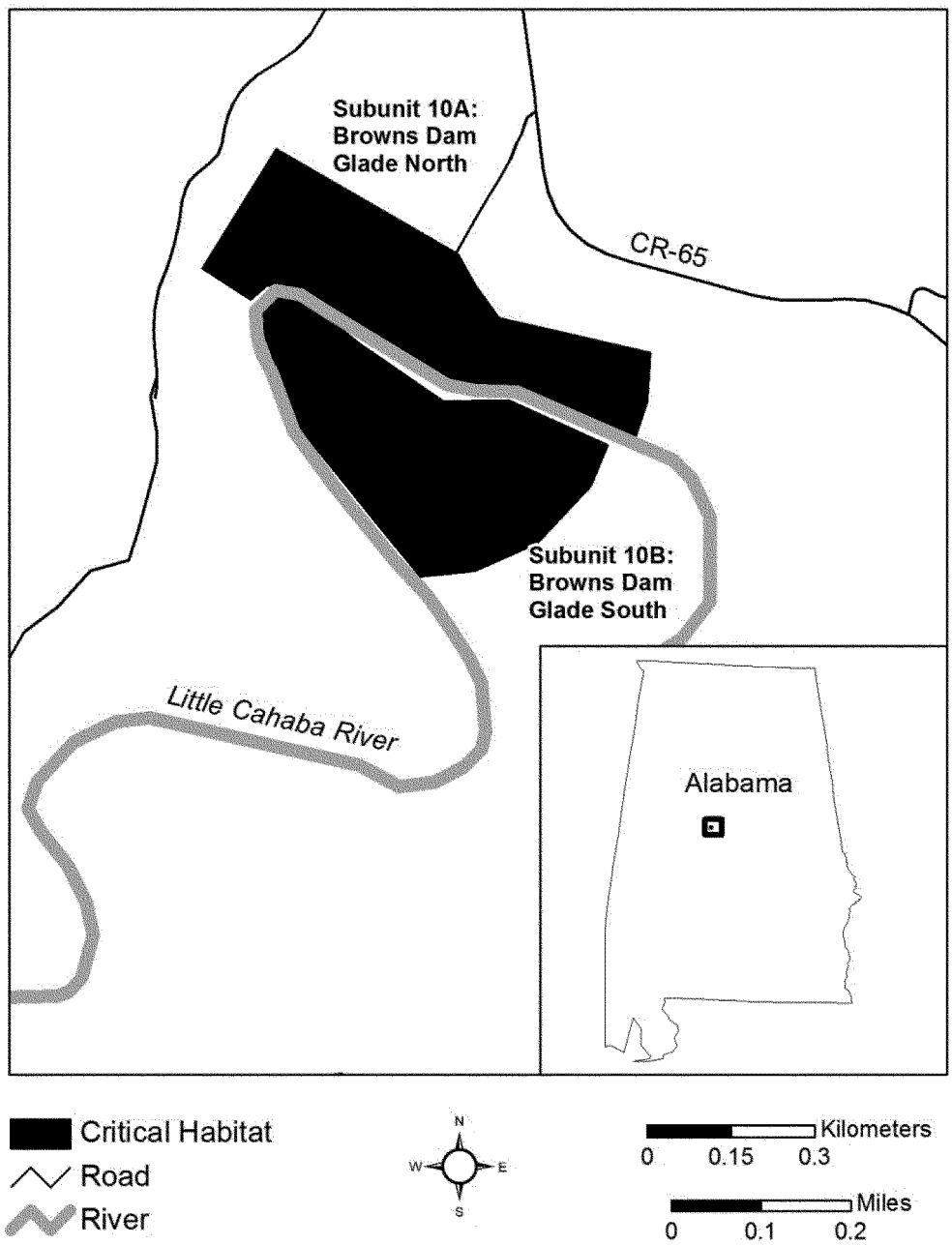
(16) Unit 10, Bibb County, Alabama.

(i) Subunit 10A: Browns Dam Glade North.

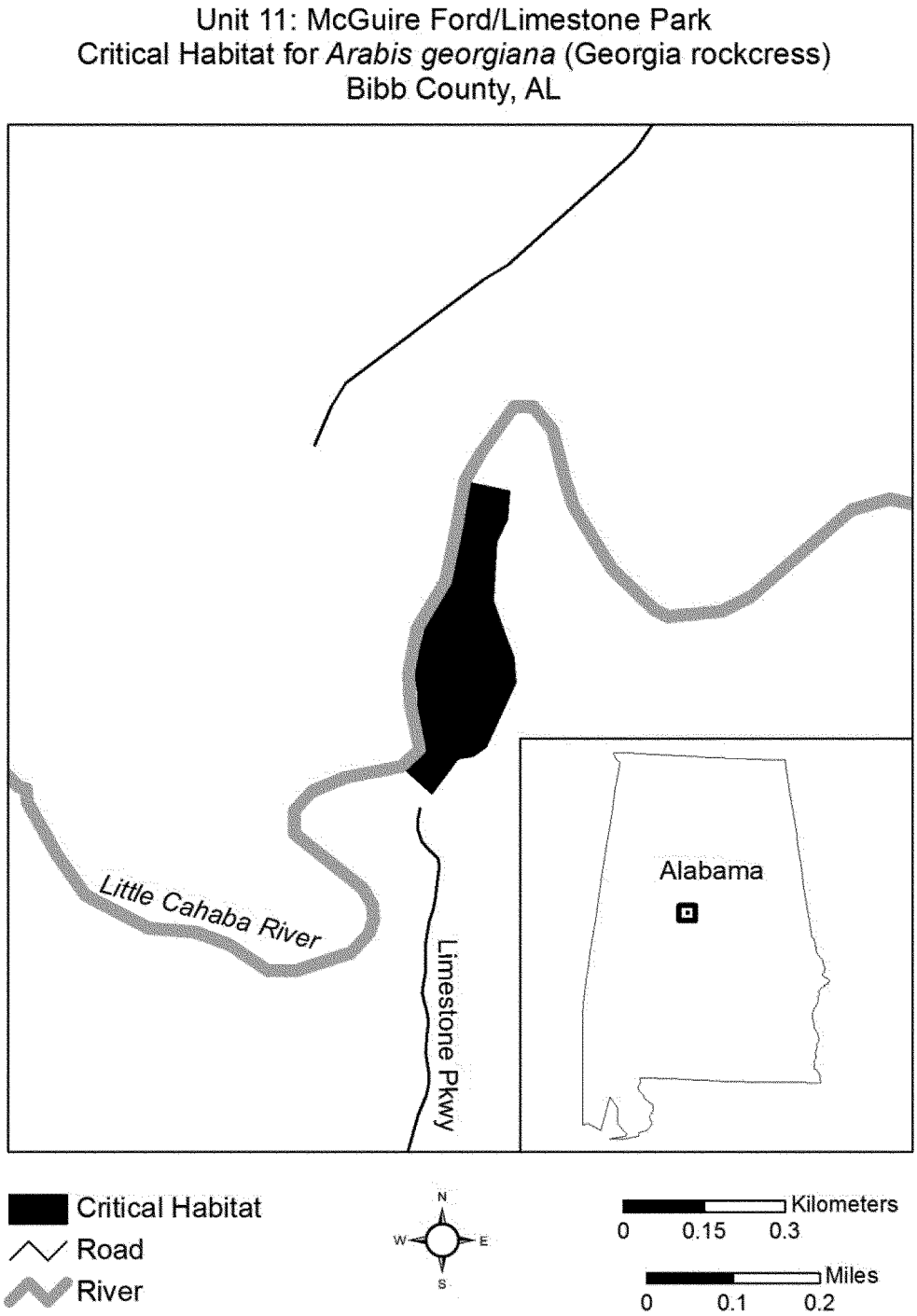
(ii) Subunit 10B: Browns Dam Glade South.

(iii) Map of Subunits 10A and 10B follows:

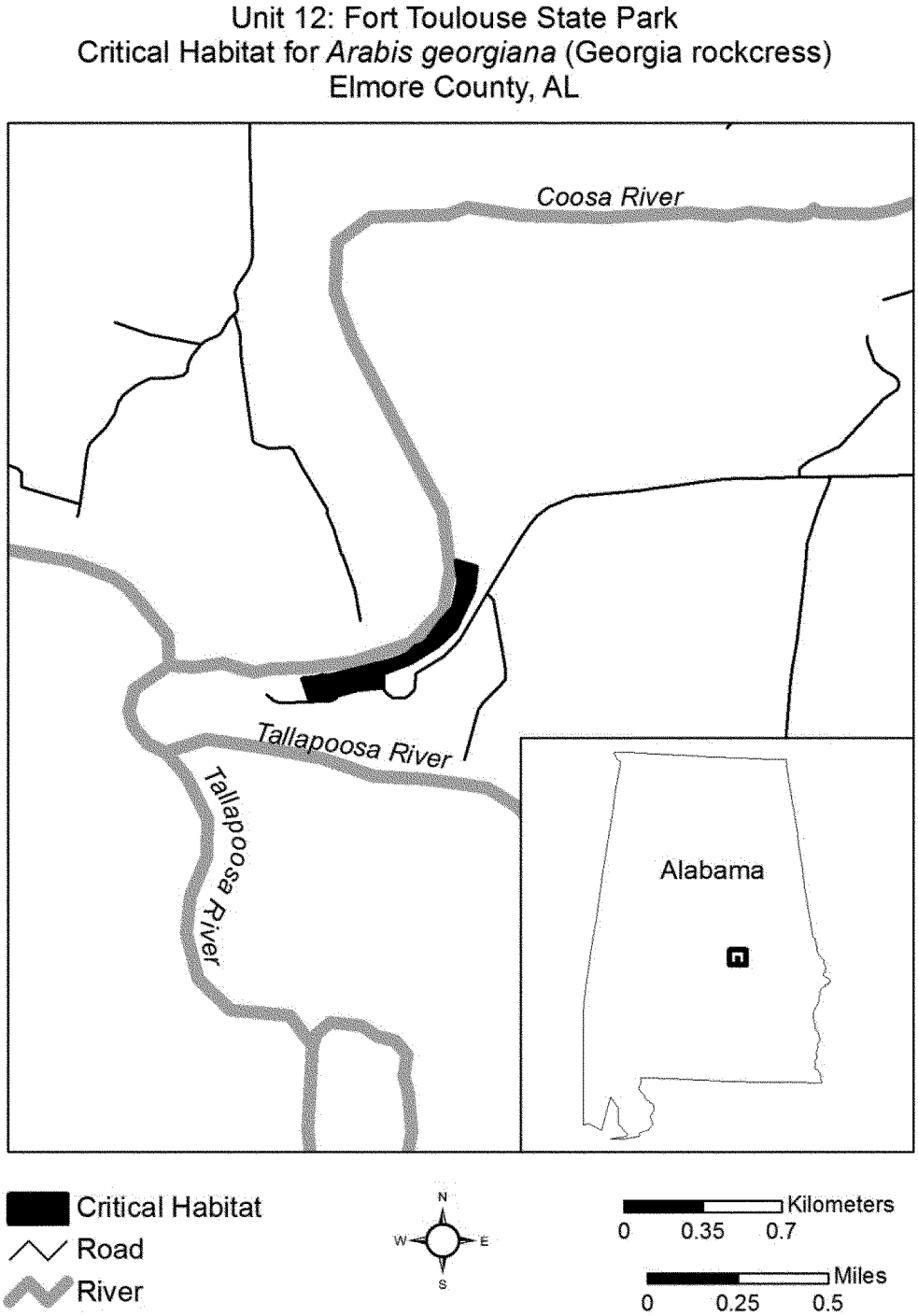
Subunits 10A and 10B: Browns Dam Glade North and Browns Dam Glade South
Critical Habitat for *Arabis georgiana* (Georgia rockcress)
Bibb County, AL



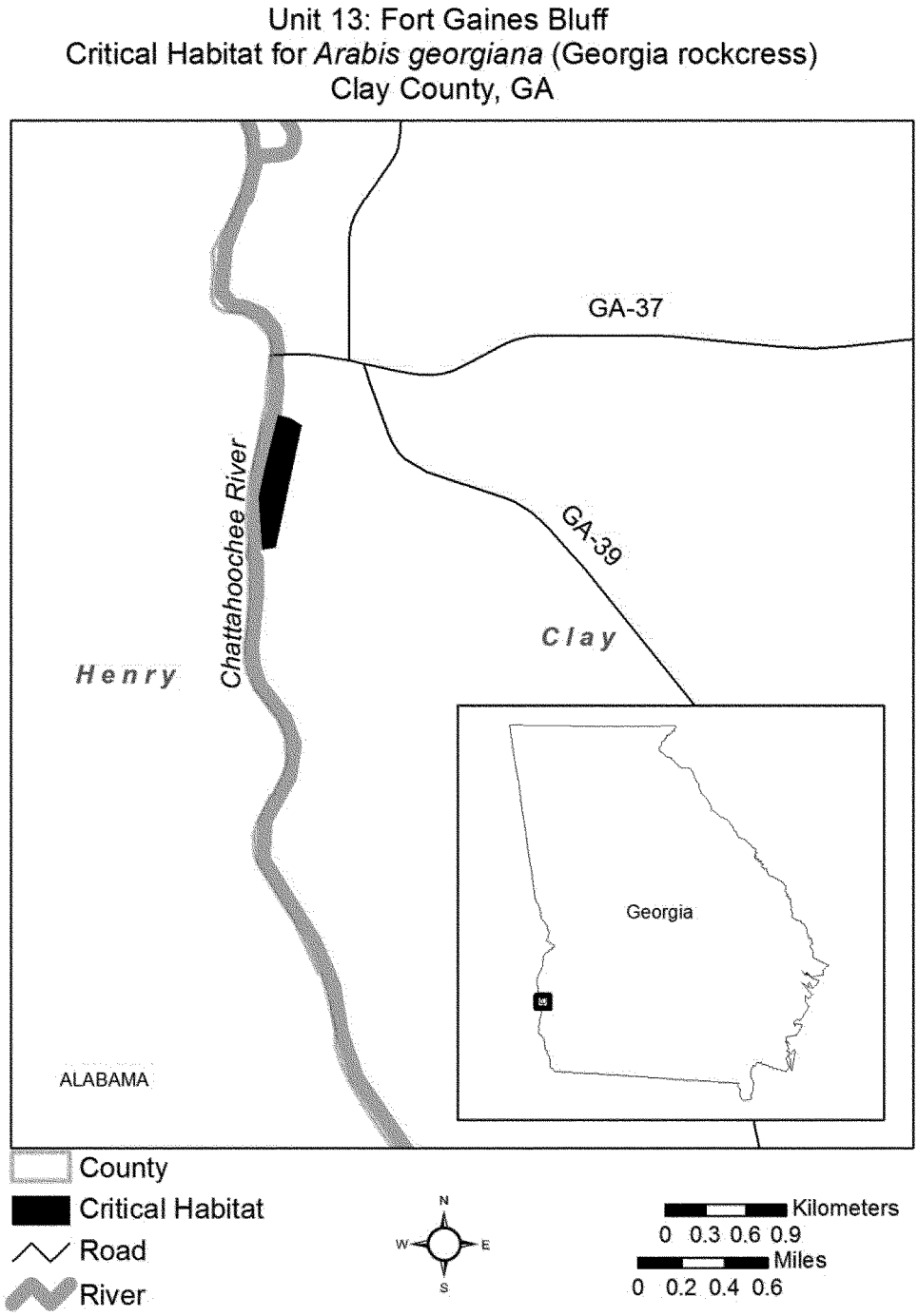
(17) Unit 11: McGuire Ford/Limestone Park, Bibb County, Alabama. Map of Unit 11 follows:



(18) Unit 12: Fort Toulouse State Park, Elmore County, Alabama. Map of Unit 12 follows:



(19) Unit 13: Fort Gaines Bluff, Clay County, Georgia. Map of Unit 13 follows:

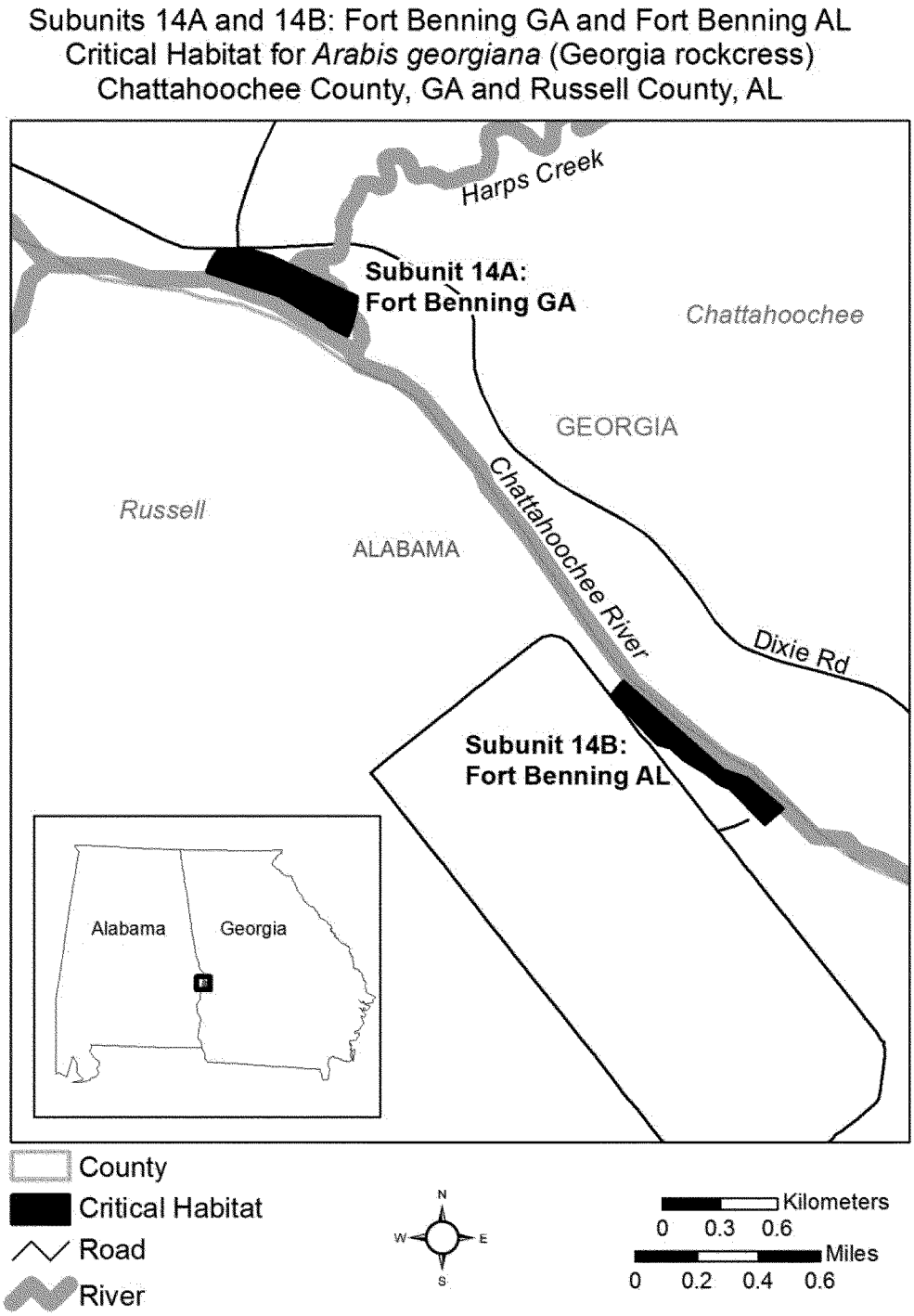


(20) Unit 14, Chattahoochee County, Georgia, and Russell County, Alabama.

(i) Subunit 14A: Fort Benning Georgia.

(ii) Subunit 14B: Fort Benning Alabama.

(iii) Map of Subunits 14A and 14B follows:

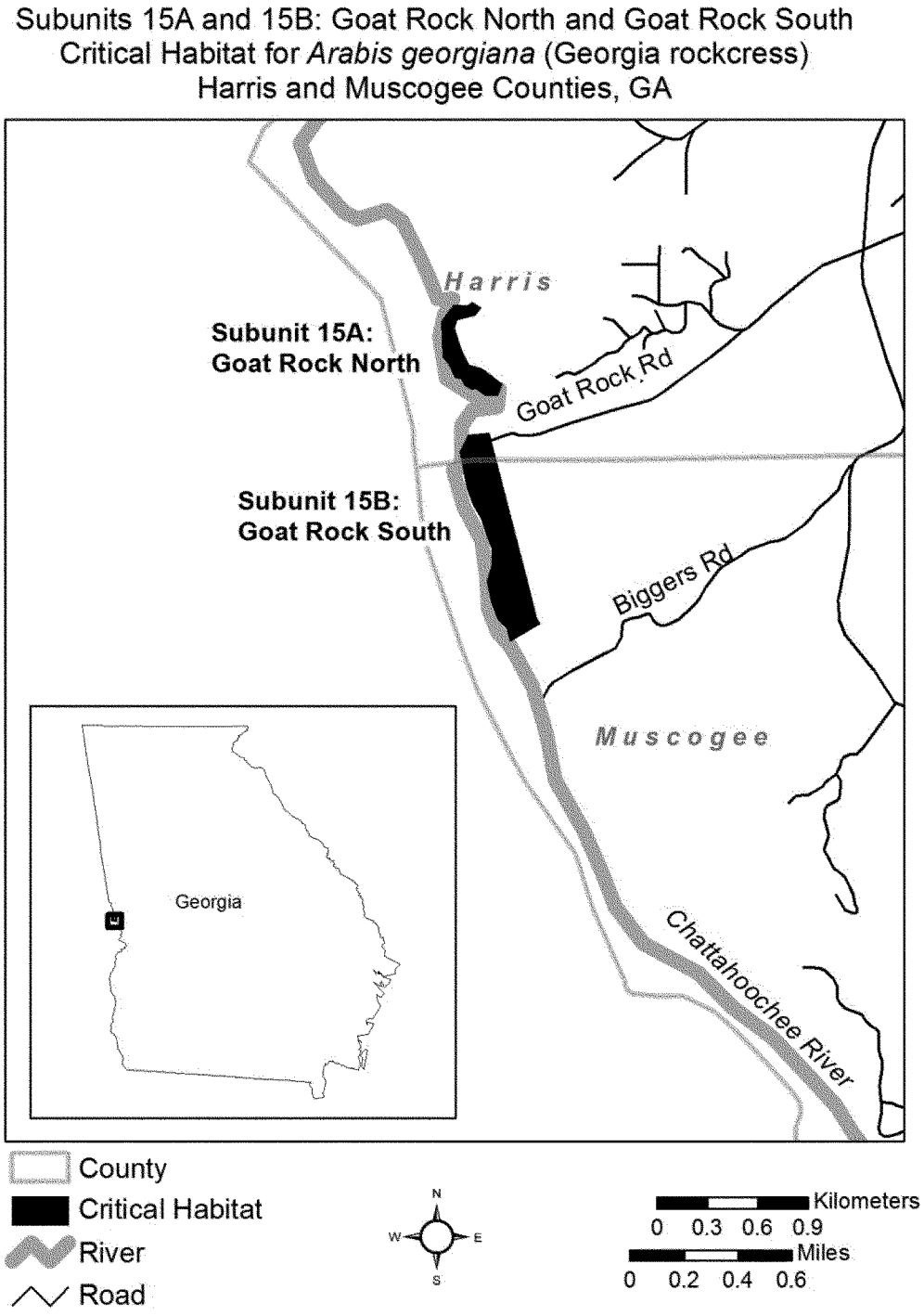


(21) Unit 15, Harris and Muscogee Counties, Georgia.

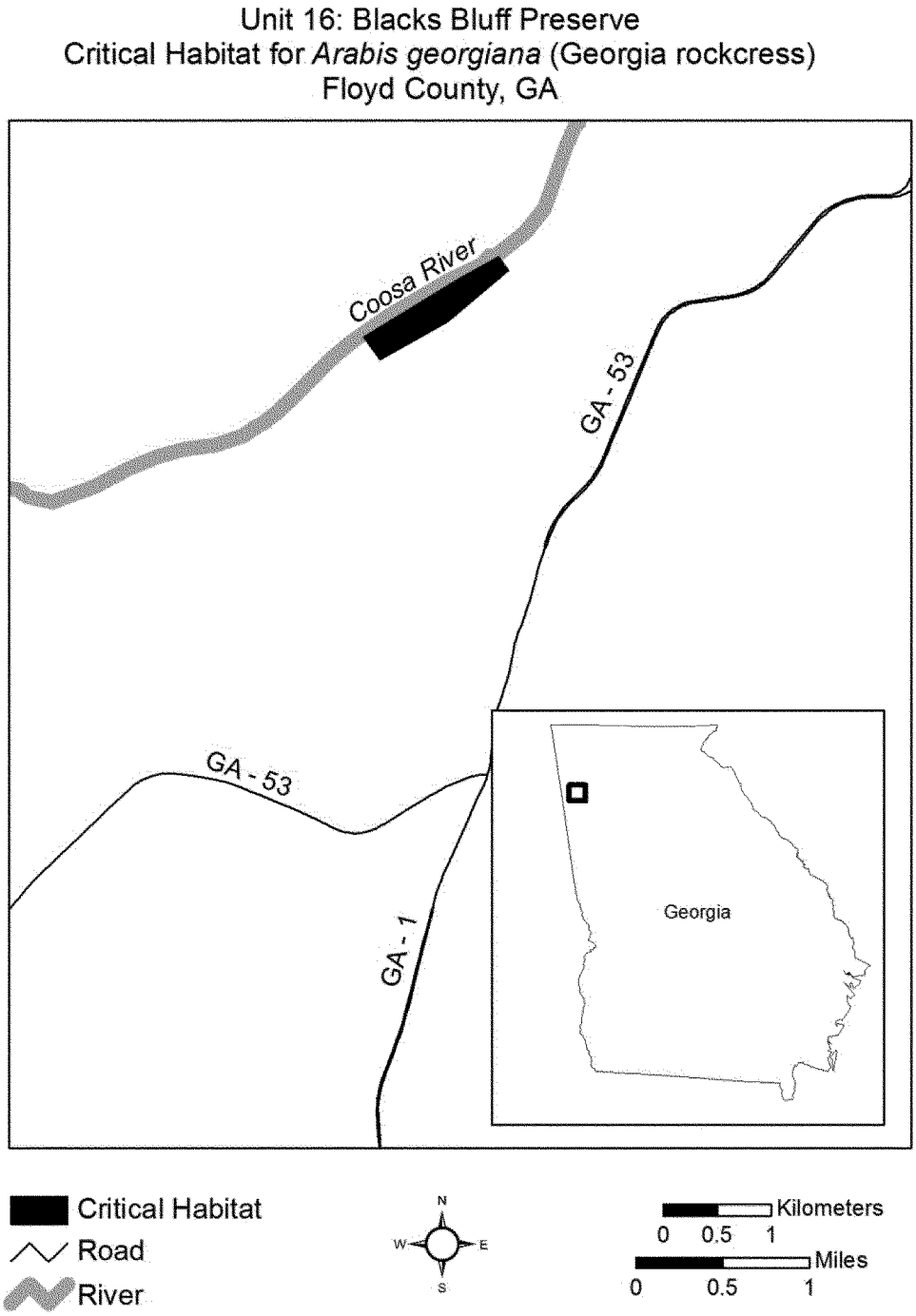
(i) Subunit 15A: Goat Rock North.

(ii) Subunit 15B: Goat Rock South.

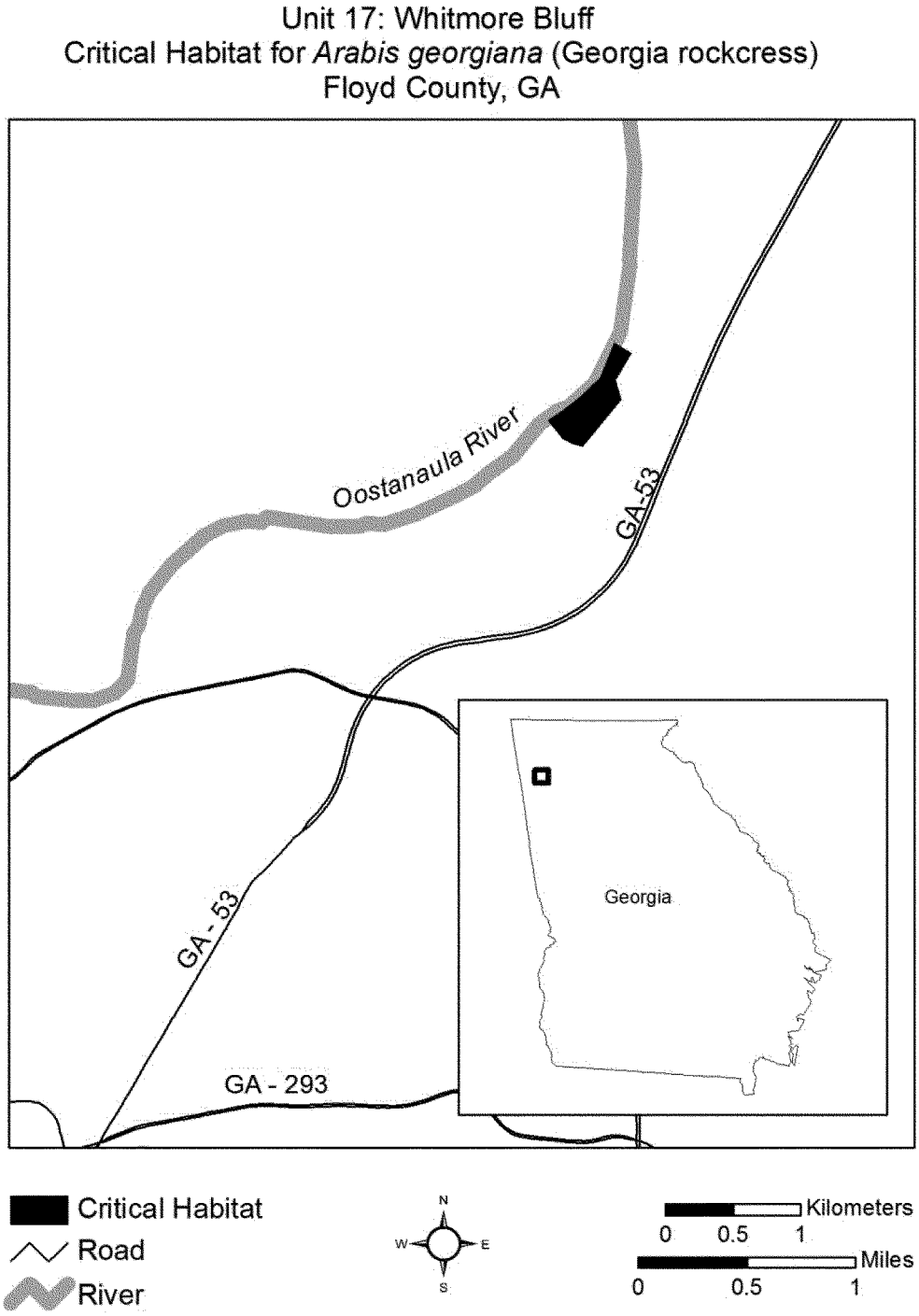
(iii) Map of Subunits 15A and 15B follows:



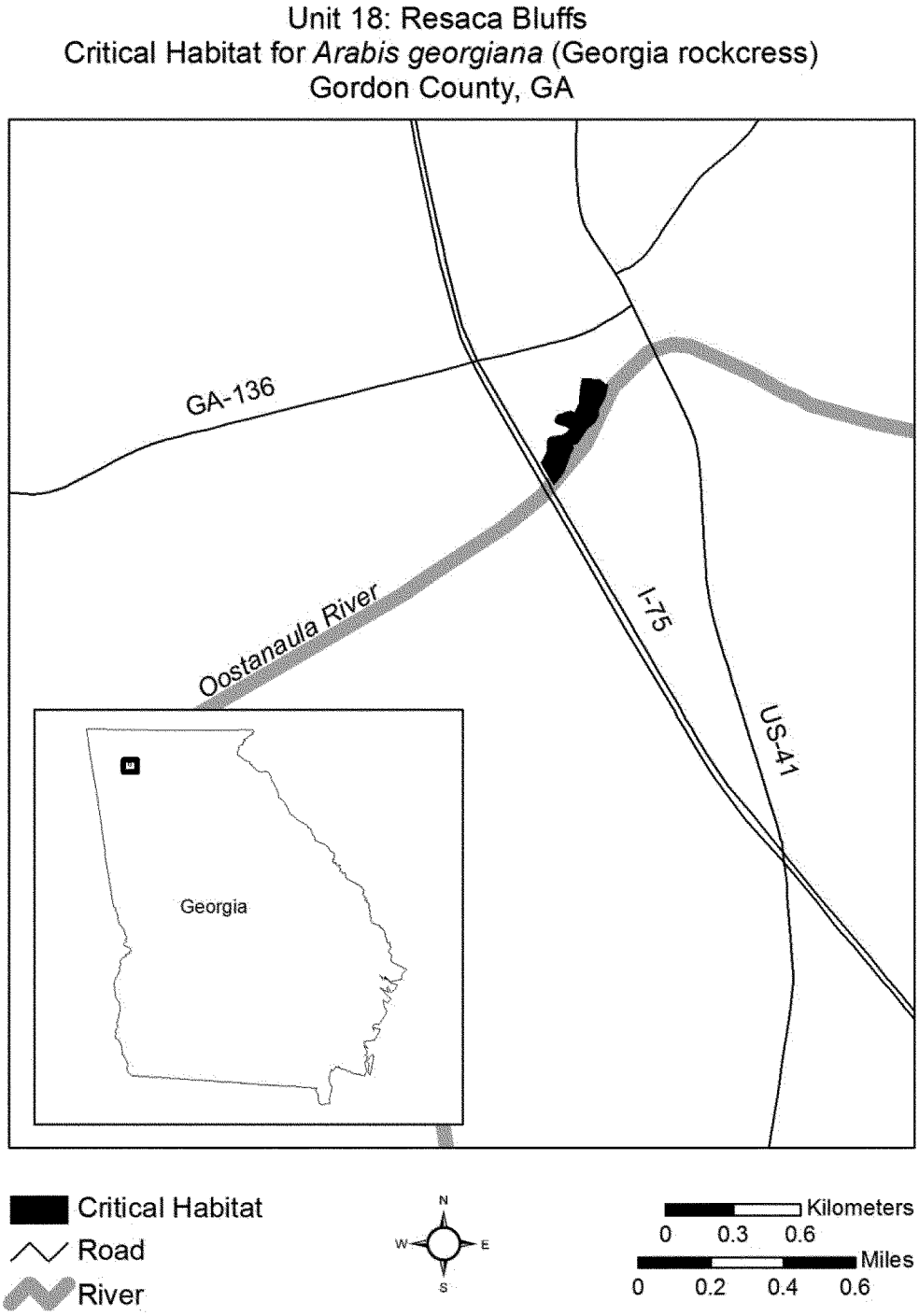
(22) Unit 16: Blacks Bluff Preserve, Floyd County, Georgia. Map of Unit 16 follows:



(23) Unit 17: Whitmore Bluff, Floyd County, Georgia. Map of Unit 17 follows:



(24) Unit 18: Resaca Bluffs, Gordon County, Georgia. Map of Unit 18 follows:



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Dated: September 3, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–22128 Filed 9–11–13; 8:45 am]

BILLING CODE 4310–55–C