project that FTA already measures as part of cost effectiveness? Should FTA consider the extent to which existing affordable housing and commercial space can be maintained in the corridor after implementation of a transit project there?

10. Should economic development be a part of the cost effectiveness measure?

Public Outreach Sessions

The meetings listed below are the first two in a series of outreach sessions that will provide a forum for FTA staff to make oral presentations on this ANPRM and allow meeting attendees an opportunity to pose questions to the speakers. Additionally, the sessions are intended to encourage interested parties and stakeholders to submit their comments directly to the official docket per the instructions found in the **ADDRESSES** section of this notice. Further outreach sessions, once scheduled, will be announced in a subsequent **Federal Register** notice.

The dates, times, and locations of the first two public outreach sessions are: (1) Monday, June 7, 4:30 pm to 6:30 pm, EST, 500 Fayetteville Street, Raleigh, NC 27601 (Marriott City Center Hotel), concurrent with the conference on "Environment and Energy: Better Delivery of Better Transportation Solutions," sponsored by the Transportation Research Board; (2) Tuesday, June 8, 2:30 pm to 4:30 pm, PST, Vancouver, British Columbia, Canada, 655 Burrard Street, Vancouver, British Columbia, Canada V6C 2R7 (Hyatt Regency Hotel), concurrent with the "2010 Rail Conference" sponsored by the American Public Transportation Association. All locations are ADA-accessible. Individuals attending a meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance or accommodations, should call Elizabeth Day, Office of Planning and Environment, at (202) 366–5159.

Regulatory Notices

All comments received on this ANPRM will be available for examination in the docket at *http://www.regulations.gov.*

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is a significant regulatory action pursuant to section 3(f) of Executive Order 12866 and the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11032). This ANPRM was reviewed by the Office of Management and Budget.

Executive Order 12866 requires agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society." Because this ANPRM does not contain specific proposals, it is not possible at this time to perform a cost-benefit analysis.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), FTA must consider whether a proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000. Because this ANPRM does not contain specific proposals, it is not possible to perform that analysis at this time. This ANPRM does, however, seek input from the public, including small entities, on the implementation of the New Starts and Small Starts programs, including what, if any, significant economic impacts might result.

Executive Order 13132: Federalism

Executive Order 13132 requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have a substantial, direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This ANPRM asks questions about FTA's implementation of the New Starts and Small Starts programs, and FTA specifically invites State and local governments with an interest in this rulemaking to provide feedback on those questions.

Regulation Identifier Number (RIN)

The U.S. DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC, this 1st day of June, 2010.

Peter Rogoff,

Administrator.

[FR Doc. 2010–13423 Filed 6–1–10; 11:15 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS- R4-ES-2010-0024]; [MO 92210-0-0009-B4]

RIN 1018-AX25

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Mississippi gopher frog (*Rana sevosa*) [= *Rana capito sevosa*] under the Endangered Species Act of 1973, as amended (Act). A total of 792 hectares (1,957 acres) in 11 units are proposed for critical habitat designation. The proposed critical habitat is located within Forrest, Harrison, Jackson, and Perry Counties, Mississippi.

DATES: We will consider comments from all interested parties until August 2, 2010. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by July 19, 2010.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments on Docket No. FWS-R4-ES-2010-0024.
- U.S. mail or hand delivery: Public Comments Processing, Attn: FWS-R4-ES-2010-0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife Office, 6578 Dogwood

View Parkway, Jackson, MS 39213; telephone: 601-321-1127; facsimile: 601-965-4340. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

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 governmental 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 (16 U.S.C. 1531 *et seq.*), 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 the benefit of designation would be outweighed by threats to the species caused by the designation, such that the designation of critical habitat is not prudent.

(2) Comments or information that may assist us in identifying or clarifying the physical and biological features essential to the conservation of the Mississippi gopher frog.

(3) Specific information on:

- The amount and distribution of Mississippi gopher frog habitat,
- What areas occupied at the time of listing and that contain physical and biological features essential to the conservation of the species,
- What special management considerations or protections may these features require, and
- What areas not occupied at the time of listing are essential for the conservation of the species and why.

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

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities (e.g., small businesses or small governments) or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing as critical habitat 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) Information on any quantifiable economic costs or benefits of the proposed designation of critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the Mississippi gopher frog, and any special management needs or protections that may be needed in the critical habitat areas we are proposing.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(10) The appropriateness of the taxonomic name change of the Mississippi gopher frog from *Rana capito sevosa* to *Rana sevosa*.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

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

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Mississippi gopher frog, refer to the final rule listing the species as endangered, which was published in the **Federal Register** on December 4, 2001 (66 FR 62993). See also the discussion of habitat in the Physical and Biological Features section below.

Taxonomy and Nomenclature

Subsequent to the listing of the Mississippi gopher frog, taxonomic research was completed which indicated that the listed entity is different from other gopher frogs and warrants acceptance as its own species, *Rana sevosa* (Young and Crother 2001, pp. 382-388). The herpetological scientific community has accepted this taxonomic change, and, as a result, we announce our intention to revise our List of Endangered and Threatened Wildlife to reflect this change in nomenclature. The common name for *Rana sevosa* used in the most recent taxonomic treatment for reptiles and amphibians is dusky gopher frog (Crother *et al.* 2003, p. 197). However, we will continue to use the common name, Mississippi gopher frog, to describe the listed entity in order to avoid confusion with some populations of the eastern *Rana capito*, for which the common name of dusky gopher frog is still popularly used.

The subspecies, dusky gopher frog (*Rana capito sevosa*), originally described those gopher frogs occurring in western Florida, Alabama, Mississippi, and Louisiana. The listing at 50 CFR 17.11 is of a distinct population segment (DPS) representing those dusky gopher frogs occurring west of the Mobile and Tombigbee Rivers in Alabama, Mississippi, and Louisiana. As discussed above, taxonomic research has elevated the dusky gopher frog to full species status. Therefore, while we are proposing a change to the listing in 50 CFR 17.11(h) to update the species name to *Rana sevosa*, the listed entity actually would not change; the same frogs would retain protection under the Act as an endangered species. We also propose to remove the State of Florida from the "Historical range" column of the table entry in 50 CFR 17.11(h) since this delineated the entire range, including unlisted portions, of the subspecies, *Rana capito sevosa*. The historic range column of the table entry in 50 CFR 17.11 (h) has been changed to reflect the historic range of the listed entity, *Rana sevosa*. As a result of the name change, the species occupying the eastern portion of the range that includes the State of Florida is the unlisted *Rana capito*.

Geographic Range, Habitat, and Threats

The Mississippi gopher frog has a very limited historical range in Alabama, Mississippi, and Louisiana. At the time of listing in 2001, this species occurred at only one site, Glen's Pond, in the DeSoto National Forest in Harrison County, Mississippi (66 FR 62993). Mississippi gopher frog habitat includes both upland sandy habitats—historically forest dominated by longleaf pine (*Pinus palustris*) —and isolated temporary wetland breeding sites

embedded within the forested landscape. Adult and subadult frogs spend the majority of their lives underground in active and abandoned gopher tortoise (*Gopherus polyphemus*) burrows, abandoned mammal burrows, and holes in and under old stumps (Richter *et al.* 2001, p. 318). Frequent fires are necessary to maintain the open canopy and ground cover vegetation of their aquatic and terrestrial habitat. The Mississippi gopher frog was listed as an endangered species due to its low population size and because of ongoing threats to the species and its habitat (66 FR 62993). Primary threats to the species include urbanization and associated development and road building; fire suppression; two potentially fatal amphibian diseases known to be present in the population; and the demographic effects of small population size (66 FR 62993; Sisson 2003, pp. 5, 9; Overstreet and Lotz 2004, pp. 1-13).

Current Status

Since the time of listing on December 4, 2001, we have used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources; Louisiana Department of Wildlife and Fisheries/ Natural Heritage Program; Mississippi Museum of Natural Science/Mississippi Department of Wildlife, Fisheries, and Parks; Mississippi gopher frog researchers; and Service data and records to search for additional locations occupied, or with the potential to be occupied, by the Mississippi gopher frog. After reviewing the available information from the areas in the three States that were historically occupied by the Mississippi gopher frog, we determined that most of the potential restorable habitat for the species occurred in Mississippi. Wetlands throughout the coastal counties of Mississippi have been identified by using U.S. Geological Survey topographic maps, National Wetland Inventory maps, Natural Resource Conservation Service county soil survey maps, and satellite imagery. Although historically the Mississippi gopher frog was commonly found in the coastal counties of Mississippi (Allen 1932, p. 9; Neill 1957, p. 49), very few of the remaining ponds provide potential appropriate breeding habitat (Sisson 2003, p. 6). Field surveys conducted in Alabama and Louisiana have been unsuccessful in documenting the continued existence of Mississippi gopher frogs in these States (Pechmann *et al.* 2006, pp. 1-23; Bailey 2009, pp. 1-2). However, two new naturally occurring populations of the Mississippi gopher frog were found in Jackson County, Mississippi (Sisson 2004, p. 8). Due to the paucity of available suitable habitat for the Mississippi gopher frog, we have worked with our State, Federal, and nongovernmental partners to identify and restore upland and wetland habitats to create appropriate translocation sites for the species. We identified 15 ponds and associated forested uplands which we considered to have restoration potential. These sites occur on the DeSoto National Forest (Harrison, Forrest, and Perry Counties), the Ward Bayou Wildlife Management Area (Jackson County), and two privately owned sites (Jackson County). We have used Glen's Pond and its surrounding uplands on the DeSoto National Forest, Harrison County, Mississippi, as a guide in our management efforts. Ongoing habitat management is being conducted at these areas to restore them as potential relocation sites for the Mississippi gopher frog. Habitat management at one of the privately owned sites (Unit 3) reached the point where we believed a translocation effort could be initiated. Tadpoles and metamorphic frogs have been released in 2004, 2005, 2007, and 2008, at a pond restored for use as a breeding site (Sisson *et al.* 2008, p. 16). In December 2007, Mississippi gopher frogs were heard calling at the site, and one egg mass was discovered (Baxley and Qualls 2007, pp. 14-15). As a result, we consider this site to be currently occupied by the species, bringing the total number of currently occupied sites to four.

Previous Federal Action

The Mississippi gopher frog (*Rana capito sevosa*) distinct population segment of the gopher frog (*Rana capito*) (see Taxonomy and Nomenclature discussion above) was listed as an endangered species under the Act on December 4, 2001 (66 FR 62993). The Service found that designation of critical habitat was prudent at the time of listing. However, the development of a designation was deferred due to budgetary and workload constraints.

On November 27, 2007, the Center for Biological Diversity and Friends of Mississippi Public Lands filed a lawsuit against the Service and the Secretary of the Interior for our failure to timely designate critical habitat for the Mississippi gopher frog (*Friends of Mississippi Public Lands and Center for Biological Diversity* v. *Kempthorne* (07-CV-02073)). In a court-approved settlement, the Service agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by May 30, 2010, and a final designation by May 30, 2011.

Critical Habitat

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 under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2)of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect 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 seeks or 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) 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.

To be considered for inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species. Areas supporting the essential physical or biological features are identified, to the extent known using the best scientific data available, as the habitat areas that provide essential life cycle needs of the species. Habitat within the geographical area occupied by the species at the time of listing that contains features essential to the conservation of the species meets the definition of critical habitat only if these features may require special management consideration or protection. Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that the best available scientific data demonstrate that those areas are essential for the conservation of the species.

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

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information 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, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the suitability of occupied habitat. Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Golladay *et al.* 2004, p. 504; Seager *et al.* 2009, p. 5043). During a period of drought from 2004 to 2007, rainfall during the Mississippi gopher frog breeding season was insufficient to support recruitment of metamorphic frogs to the population (Sisson 2004, p. 7; Sisson 2005, pp. 11-12; Baxley and Qualls 2006, pp. 7-9; Baxley and Qualls 2007, p. 13).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Mississippi gopher frog that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the proposed critical habitat for this species; however, we specifically request information from the public on the currently predicted effects of climate change on the Mississippi gopher frog and its habitat. Additionally, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. 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), section 7 consultations, 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 designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) the designation of critical habitat would not be beneficial to the species.

There is no documentation that the Mississippi gopher frog is threatened by taking or other human activity. In the absence of finding that the designation of critical habitat would increase threats to the species, if there are any benefits to a critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering consultation, under section 7 of the Act, in new areas for action in which there may be a Federal nexus where consultation would not otherwise occur, because, for example, an area is or has become unoccupied or the occupancy is in question; (2) identifying the physical and biological features essential to the Mississippi gopher frog and focusing conservation activities on these essential features and the areas that support them; (3) providing educational benefits to State or county governments or private entities engaged in activities or long-range planning in areas essential to the conservation of the species; and (4) preventing people from causing inadvertent harm to the species. Conservation of the Mississippi gopher frog and the essential features of the habitat will require habitat protection and restoration, which will be facilitated by knowledge of habitat locations and the physical and biological features of those habitats.

Therefore, since 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 the designation of critical habitat for the Mississippi gopher frog is prudent.

Critical Habitat Determinability

As stated above, section 4(a)(3) of the Act requires the designation of critical habitat concurrently with the species' listing "to the maximum extent prudent and 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:

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

(2) 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 provides for 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 Mississippi gopher frog, the historical distribution of the Mississippi gopher frog, and the habitat characteristics where they currently survive. This and other information represent the best scientific and commercial data available and led us to conclude that the designation of critical habitat is determinable for the Mississippi gopher frog.

Methods

As required by section 4(b) of the Act, we used the best scientific and commercial data available in determining which areas within the geographical area occupied by the species at the time of listing contain the physical and biological features essential to the conservation of the Mississippi gopher frog that may require special management considerations or protections, and which areas outside of the geographical area occupied at the time of listing are essential for the conservation of the species.

We reviewed the available information pertaining to historical and current distributions, life histories, and habitat requirements of this species. Our sources included peer-reviewed scientific publications; unpublished survey reports; unpublished field observations by the Service, State, and other experienced biologists; notes and communications from qualified biologists or experts; Service publications such as the final listing rule for the Mississippi gopher frog; and Geographic Information System (GIS) data (such as species occurrence data, habitat data, land use, topography, digital aerial photography, and ownership maps).

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to propose as critical habitat, we consider the physical and biological features essential to the conservation of the species 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 of offspring; and

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

We consider the specific physical and biological features to be the primary constituent elements (PCEs; see "**Primary Constituent Elements**" below) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. We derive the PCEs required for the species from the biological needs of the Mississippi gopher frog as described in the Background section of this proposed rule and the final listing rule (66 FR 62993). To identify the physical and biological features essential to the conservation of the Mississippi gopher frog, we have relied on current conditions at locations where the species survives, the limited information available on this species and its close relatives, as well as factors associated with the decline of other amphibians that occupy similar habitats in the lower Southeastern Coastal Plain (U.S. Fish and Wildlife Service 2001, pp. 62993-63002).

Space for Individual and Population Growth and for Normal Behavior

Mississippi gopher frogs are terrestrial amphibians endemic to the longleaf pine ecosystem. They spend most of their lives underground and occur in forested habitat consisting of fire-maintained, open-canopied woodlands historically dominated by longleaf pine, with naturally occurring slash pine (*P. elliotti*) in wetter areas. Frequent fires also support a diverse ground cover of herbaceous plants, both in the uplands and in the breeding ponds (Hedman *et al.* 2000, p. 233; Kirkman *et al.* 2000, p. 373). Historically, fire-tolerant longleaf pine dominated the uplands; however, much of the original habitat has been converted to pine (often loblolly (*P. taeda*) or slash pine) plantations and has become a closed-canopy forest unsuitable as habitat for gopher frogs (Roznik and Johnson 2009a, p. 265).

During the breeding season, Mississippi gopher frogs leave their subterranean retreats in the uplands and migrate to their breeding sites during rains associated with passing cold fronts. Breeding sites are ephemeral (seasonally flooded) isolated ponds (not connected to other water bodies) located in the uplands. Both forested uplands and isolated wetlands (see further discussion of isolated wetlands in *Sites for Breeding, Reproduction, and Rearing of Offspring* section) are needed to provide space for individual and population growth and normal behavior.

Few data are available on the distance between the wetland breeding and upland terrestrial habitats of post-larval and adult Mississippi gopher frogs. After breeding, adult Mississippi gopher frogs leave pond sites during major rainfall events. Richter *et al.* (2001, pp. 316-321) used radio transmitters to track a total of 13 adult frogs at Glen's Pond, the primary Mississippi gopher frog breeding site, located in Harrison County, Mississippi. The farthest movement recorded was 299 meters (m) (981 feet (ft)) by a frog tracked for 63 days from the time of its exit from the breeding site (Richter *et al.* 2001, p. 318). In Florida, closely related Florida gopher frogs (*Rana capito aesopus*) have been found up to 2 kilometers (km) (1.2 miles (mi) from their breeding sites (Carr 1940, p. 64; Franz *et al.* 1988, p. 82), although how frequently gopher frogs make these long-distance movements is not known (see discussion in Roznik *et al.* 2009, p. 192). It is difficult to interpret habitat use from the available movement data we have for the Mississippi gopher frog. However, we have calculated the area of a circle, using the value of 350 m (1,148 ft) as the radius around a point represented by the breeding site, to define the area of habitat we believe would protect the majority of a Mississippi gopher frog population's breeding and upland habitat. We chose the value of 350 m (1,148 ft) by using the known farthest distance movement for the Mississippi gopher frog of 299 m (rounded up to 300 m) and adding 50 m (164 ft) to this distance to minimize the edge effects of the surrounding land use as recommended by Semlitsch and Bodie (2003, pp. 1222-1223). Due to the low number of occupied sites for the species, we are conducting habitat management at potential relocation sites

with the hope of establishing new populations (see discussion above at **Geographic Range, Habitat, Threats, and Status** section). When possible, we are managing wetlands within 1,000 m (3,281 ft) of each other, in these areas, as a block in order to create multiple breeding sites and metapopulation structure (defined as neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation) in support of recovery (Marsh and Trenham 2001, p. 40; Richter *et al.* 2003, p. 177).

Due to fragmentation and destruction of habitat, the current range of naturally occurring Mississippi gopher frogs has been reduced to three sites. In addition, the gopher tortoise, whose burrows are considered to be optimal terrestrial habitat for gopher frogs, is a rare and declining species that is listed as a threatened species under the Act within the range of the Mississippi gopher frog. Fragmentation of the frog's habitat has subjected the species' small, isolated populations to genetic isolation and reduction of space for reproduction, development of young, and population maintenance; thus, fragmentation has increased the likelihood of population extinction (U.S. Fish and Wildlife Service 2001, pp. 62993-63002). Genetic variation and diversity within a species are essential for recovery, adaptation to environmental changes, and long-term viability (capability to live, reproduce, and develop) (Harris 1984, pp. 93-107). Long-term viability is founded on the existence of numerous interbreeding local populations throughout the range (Harris 1984, pp. 93-107). Connectivity of Mississippi gopher frog breeding and nonbreeding habitat within the geographic area occupied by the species must be maintained to support the species' survival (Semlitsch 2002, p. 624; Harper *et al.* 2008, p. 1205). Additionally, connectivity of these sites with other areas outside the geographical area occupied currently by the Mississippi gopher frog is essential for the conservation of the species (Semlitsch 2002, p. 624; Harper *et al.* 2008, p. 1205).

Based on the biological information and needs discussed above, it is essential to protect ephemeral isolated ponds and associated forested uplands, and connectivity of these areas, to accommodate breeding, growth, and other normal behaviors of the Mississippi gopher frog and to promote genetic flow within the species.

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

Mississippi gopher frog tadpoles eat periphyton (microscopic algae, bacteria, and protozoans) from surfaces of emergent vegetation or along the pond bottom, as is typical of pond-type tadpoles (Duellman and Trueb 1986, p. 159). Juvenile and adult gopher frogs are carnivorous. Insects found in their stomachs have included carabid (*Pasimachus* sp.) and scarabaeid (genera *Canthon* sp. and *Ligryus* sp.) beetles (Netting and Goin 1942, p. 259) and *Ceuthophilus* crickets (Milstrey 1984, p. 10). Mississippi gopher frogs are gape-limited (limited by the size of the jaw opening) predators with a diet probably similar to that reported for other gopher frogs, including frogs, toads, beetles, hemipterans, grasshoppers, spiders, roaches, and earthworms (Dickerson 1906, p. 196; Carr 1940, p. 64). Within the pine uplands, a diverse and abundant herbaceous layer consisting of native species, maintained by frequent fires, is important to maintain the prey base for juvenile and adult Mississippi gopher frogs. Wetland water quality and an open canopy (Skelly *et al.* 2002, p. 983) are important to the maintenance of the periphyton that serves as a food source for Mississippi gopher frog tadpoles.

Based on the biological information and needs discussed above, we believe it is essential that Mississippi gopher frog habitat consist of ephemeral, isolated ponds with emergent vegetation, and open-canopied pine uplands with a diverse herbaceous layer, to provide for adequate food sources for the frog.

Cover or Shelter

Amphibians need to maintain moist skin for respiration (breathing) and osmoregulation (controlling the amounts of water and salts in their bodies) (Duellman and Trueb 1986, pp. 197-222). Since Mississippi gopher frogs disperse from their aquatic breeding sites to the uplands where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate moisture regimes during their migration. Richter *et al.* (2001, pp. 317-318) found that during migration, Mississippi gopher frogs used clumps of grass or leaf litter for refuge. Protection of this connecting habitat may be particularly important for juveniles as they move out of the breeding pond for the first time. Studies of migratory success in post-metamorphic amphibians have demonstrated the importance of high levels of survival of these individuals to population maintenance and persistence (Rothermel 2004, pp. 1544-1545).

Both adult and juvenile Mississippi gopher frogs spend most of their lives underground in forested uplands (Richter *et al.* 2001, p. 318). Underground retreats include gopher tortoise burrows, small mammal burrows, stump holes, and root mounds of fallen trees (Richter *et al.* 2001, p. 318). Availability of appropriate underground sites is especially important for juveniles in their first year. Survival of juvenile gopher frogs in north-central Florida was found to be dependent on their use of underground refugia (Roznik and Johnson 2009b, p. 431). Mortality for a frog occupying an underground refuge was estimated to be only four percent of the likelihood of mortality for a frog not occupying an underground refuge (Roznik and Johnson 2009b, p. 434).

Based on the biological information and needs discussed above, we believe it is essential that Mississippi gopher frog habitat have appropriate connectivity habitat between wetland and upland sites to support survival during migration. Additionally, we believe it is essential that non-wetland habitats contain a variety of underground retreats such as gopher tortoise burrows, small mammal burrows, stump holes, and root mounds of fallen trees to provide cover and shelter for the Mississippi gopher frog.

Sites for Breeding, Reproduction, or Rearing

Mississippi gopher frog breeding sites are isolated ponds that dry completely on a cyclic basis. Faulkner (66 FR 62994) conducted hydrologic research at the Glen's Pond site on DeSoto National Forest, Harrison County, Mississippi. He described the pond as a depressional feature on a topographic high. The dominant source of water to the pond is rainfall within a small, localized watershed that extends 61 to 122 m (200 to 400 ft) from the pond's center. Substantial winter rains are needed to ensure that the pond fills sufficiently to allow hatching, development, and metamorphosis (change to adults) of larvae. The timing and frequency of rainfall are critical to the successful reproduction and recruitment of Mississippi gopher frogs. Adult frogs move to wetland breeding sites during heavy rain events, usually from January to late March (Richter and Seigel 2002, p. 964). Studies at Glen's Pond indicate that this breeding pond is

approximately 1.5 hectares (ha) (3.8 acres (ac)) when filled and attains a maximum depth of 1.1 m (3.6 ft) (Thurgate and Pechmann 2007, p. 1846). The pond is hard-bottomed, has an open canopy, and contains emergent and submergent vegetation. It is especially important that a breeding pond have an open canopy: though the mechanism is unclear, it is believed an open canopy is critical to tadpole development. Experiments conducted by Thurgate and Pechmann (2007, pp. 1845-1852) demonstrated the lethal and sublethal effects of canopy closure on Mississippi gopher frog tadpoles. The general habitat attributes of the other three Mississippi gopher frog breeding ponds are similar to those of Glen's Pond. Female Mississippi gopher frogs attach their eggs to rigid vertical stems of emergent vegetation (Young 1997, p. 48). Breeding ponds typically dry in early to mid-summer, but on occasion have remained wet until early fall (Richter and Seigel 1998, p. 24). Breeding ponds of closely related gopher frogs in Alabama and Florida have similar structure and function to those of the Mississippi gopher frog (Bailey 1990, p. 29; Palis 1998, p. 217; Greenberg 2001, p. 74).

An unpolluted wetland with water free of predaceous fish, sediment, pesticides, and chemicals associated with road runoff is important for egg development, tadpole growth and development; and successful mating and egg-laying by adult frogs.

Based on the biological information and needs discussed above, we believe that in order to provide for breeding and development of the species, it is essential that Mississippi gopher frog habitat contain isolated ponds with hard bottoms, open canopies, and emergent vegetation, and water free of predaceous fish, sediment, pesticides, and chemicals associated with road runoff.

In summary, based on the biological information and needs described above, essential Mississippi gopher frog habitat consists of upland forested terrestrial habitat, maintained by frequent fires, and unpolluted isolated wetland breeding sites, and the connectivity of these sites, to accommodate feeding, breeding, growth, and other normal behaviors of the Mississippi gopher frog and to promote genetic flow within the species.

Based on our current knowledge of life history, biology, and ecology of the Mississippi gopher frog and the requirements of the habitat to sustain the essential life history functions of the species, we determined that the PCEs specific to the Mississippi gopher frog are:

(1) Breeding ponds, geographically isolated from other waterbodies and embedded in forests historically dominated by longleaf pine communities, that are small (generally <0.4 to 4.0 hectares (ha) (<1 to 10 acres (ac)), ephemeral, and acidic. Specific conditions necessary in breeding ponds to allow for successful reproduction of Mississippi gopher frogs are: An open canopy with emergent herbaceous vegetation for egg attachment; an absence of large, predatory fish which prey on frog larvae; water quality such that frogs, their eggs, or larvae are not exposed to pesticides or chemicals and sediment associated with road runoff; and surface water that lasts for a minimum of 195 days during the breeding season to allow a sufficient period for larvae to hatch, mature, and metamorphose.

(2) Upland forested nonbreeding habitat historically dominated by longleaf pine, adjacent and accessible to and from breeding ponds, that is maintained by fires frequent enough to support an open canopy and abundant herbaceous ground cover and gopher tortoise burrows, small mammal burrows, stump holes, or other underground habitat that the Mississippi gopher frog depends upon for food, shelter, and protection from the elements and predation; and

(3) Accessible upland connectivity habitat between breeding and nonbreeding habitats which allows for Mississippi gopher frog movements between and among such sites and that is characterized by an open canopy and abundant native herbaceous species and subsurface structure which provides shelter for Mississippi gopher frogs during seasonal movements, such as that created by deep litter cover, clumps of grass, or burrows.

Critical habitat was delineated as described above using the value of 350 m (1,148 ft) as the radius around a point represented by the breeding site, to define the area of habitat we believe would protect the majority of a Mississippi gopher frog population's breeding and upland habitat. We chose the value of 350 m (1,148 ft) by using the known farthest distance movement for the Mississippi gopher frog of 299 m (rounded up to 300 m) and adding 50 m (164 ft) to this distance to minimize the edge effects of the surrounding land use as recommended by Semlitsch and Bodie (2003, pp. 1222-1223). When possible, we are managing wetlands within 1,000 m (3,281 ft) of each other, in these areas, as a block in order to create multiple breeding sites and metapopulation structure (defined as neighboring local populations close enough to one another that dispersing individuals could be exchanged (gene flow) at least once per generation) in support of recovery (Marsh and Trenham 2001, p. 40; Richter *et al.* 2003, p. 177).

With this proposed designation of critical habitat, we intend to conserve the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the PCEs sufficient to support the life history functions of the species. Each of the areas proposed as critical habitat in this rule contains sufficient PCEs to provide for one or more of the life history functions of the Mississippi gopher frog.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain physical and biological features that are essential to the conservation of the species and whether those features may require special management considerations or protection.

The essential physical and biological features within the area we are proposing for designation as critical habitat that is within the geographical area occupied by the species at the time it was listed, will require some level of management to address the current and future threats. This area of proposed critical habitat is not presently under special management or protection provided by a legally operative plan or agreement for the conservation of the Mississippi gopher frog. Various activities in or adjacent to this area of proposed critical habitat may affect one or more of the PCEs. For example, features in this proposed critical habitat designation may require special management due to threats posed by land use conversions, primarily urban development and conversion to agriculture and pine plantations; stump removal and other soil-disturbing activities which destroy the below-ground structure within forest soils; fire suppression and low fire frequencies; wetland destruction and degradation; random effects of drought or floods; off-road vehicle use; gas, water, electrical power, and sewer easements; and activities which disturb underground refugia used by Mississippi gopher frogs for foraging, protection from predators, and shelter from the elements. Other activities that may affect PCEs in the proposed critical habitat units include those listed in the **Effects of Critical Habitat Designation** section below.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Mississippi gopher frog. Activities with a Federal nexus that may affect areas outside of critical habitat, such as development; road construction and maintenance; and gas, water, electrical power, and sewer easements and/or pipelines, are still subject to review under section 7 of the Act if they may affect the Mississippi gopher frog, because Federal agencies must consider both effects to the species and effects to critical habitat independently. The Service should be consulted for disturbances to areas both within the proposed critical habitat units as well as outside the proposed critical habitat designation in other geographic areas within the historical range of the Mississippi gopher frog where the species may still persist. The prohibitions of section 9 of the Act against the take of listed species also continue to apply both inside and outside of designated critical habitat.

Criteria Used to Identify Proposed Critical Habitat

Using the best scientific and commercial data available, as required by section 4(b) of the Act, we identified those areas to propose for designation as critical habitat, within the geographical area occupied by the species at the time of listing, that contain those physical and biological features essential to the conservation of the Mississippi gopher frog and which may require special management considerations or protection. We also considered the area outside the geographical area occupied by the species at the time of listing that is essential for the conservation of the Mississippi gopher frog. Many of the areas we considered for inclusion are part of ongoing recovery initiatives for this species.

We used the best scientific data available in determining areas that contain the features that are essential to the conservation of the Mississippi gopher frog that are those physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species (see the Physical and Biological Features section). We are proposing to designate as critical habitat one site within the geographical area that was occupied by the Mississippi gopher frog at the time of listing, and which is known to be currently occupied. We are also proposing to designate additional areas, both currently occupied and unoccupied, as critical habitat. We have determined that these areas, which are outside the geographical area occupied by the species at the time of listing, are essential to the conservation of the species because they provide additional habitat for maintenance of newly discovered populations and for population expansion which is needed to conserve the Mississippi gopher frog.

We began our critical habitat analysis by evaluating the Mississippi gopher frog in the context of its historic distribution to determine what portion of its range still contains the physical and biological features that are essential to the conservation of the species. We assessed the critical life-history components of the Mississippi gopher frog, as they relate to habitat. Mississippi gopher frogs require small, acidic, depressional standing bodies of freshwater for breeding, upland pine forested habitat that has an open canopy maintained by fire for non-breeding habitat, and upland connectivity habitat areas that allow for movement between nonbreeding and breeding sites.

To determine which areas should be designated as critical habitat, we evaluated the essential physical and biological features of Mississippi gopher frog habitat as it exists within the currently occupied habitat. As discussed above, we considered the following criteria in the selection of areas that contain the essential features for the Mississippi gopher frog when designating units: (1) The historic distribution of the species; (2) presence of open-canopied, isolated wetlands; (3) presence of open-canopied, upland pine forest in sufficient quantity around each wetland location to allow for sufficient survival and recruitment to maintain a breeding population over the long term; (4) open-canopied, forested connectivity habitat between wetland and upland sites; and (5) multiple isolated wetlands in upland habitat that would allow for the development of metapopulations.

Currently Occupied Habitat Proposed as Critical Habitat

As discussed above, currently occupied habitat for the Mississippi gopher frog is limited to four sites: One location on the DeSoto National Forest, Harrison County, Mississippi; one site on State land in Jackson County, Mississippi; and two sites on private land in Jackson County, Mississippi. Only the Harrison County site was occupied at the time of listing, while the remaining sites were found to be occupied, or became occupied, after the date of listing. We believe that all currently occupied areas contain those physical and biological features essential to the conservation of these species which may require special management considerations or protection and are themselves essential to the conservation of the species.

Currently Unoccupied Habitat Proposed as Critical Habitat

The currently occupied habitat of the Mississippi gopher frog is highly localized and fragmented. With such limited distribution, the Mississippi gopher frog is at high risk of extinction and highly susceptible to stochastic events. Pond-breeding amphibians are particularly susceptible to drought, as breeding cannot occur if breeding ponds do not receive adequate rainfall. Isolated populations, such as these of the Mississippi gopher frog, are highly susceptible to random events. Protection of a single, isolated, minimally viable population risks the extirpation or extinction of a species as a result of harsh environmental conditions, catastrophic events, or genetic deterioration over several generations (Kautz and Cox 2001, p. 59). To reduce the risk of extinction through these processes, it is important to establish multiple protected subpopulations across the landscape (Soulé and Simberloff 1986, pp. 25-35; Wiens 1996, pp. 73-74).

We used information from surveys and reports prepared by the Alabama Department of Conservation and Natural Resources; Mississippi Department of Wildlife, Fisheries, and Parks; and Mississippi gopher frog researchers, along with Service data and records, to search for additional locations with the potential to be occupied by the Mississippi gopher frog. Habitat in Alabama and Louisiana is severely limited, so our focus was on identifying sites in Mississippi. Wetlands throughout the coastal counties of Mississippi were identified using U.S. Geological Survey topographic maps, National Wetland Inventory maps, Natural Resource Conservation Service county soil survey maps, and satellite imagery. Habitat with the best potential of establishing the physical and biological features essential to the conservation of the Mississippi gopher frog were concentrated on the DeSoto National Forest in Forrest, Harrison, and Perry Counties in southern Mississippi. Some additional sites were found in Jackson County on Federal land being managed by the State as a Wildlife Management Area and on private land being managed as a wetland mitigation bank. Habitat restoration efforts have been successful in establishing at least one of the PCEs on each of these sites, and management is continuing, with the goal of establishing all of the PCEs at all of the sites.

The currently unoccupied sites that we are proposing as critical habitat are all within the historical range of the Mississippi gopher frog. We believe that the designation of additional areas not known to be currently occupied is essential for the conservation of the Mississippi gopher frog. The range of the Mississippi gopher frog has been severely curtailed, occupied habitats are limited and isolated, and population sizes are extremely small. While the four occupied units provide habitat for current populations, they may be at risk of extirpation and extinction from stochastic events that occur as periodic natural events or existing or potential human-induced events (U.S. Fish and Wildlife Service 2001, pp. 62993-63002). The inclusion of essential unoccupied areas will provide habitat for population translocation and will decrease the risk of extinction of the species. Based on the best scientific data, we believe that these areas not currently occupied by the Mississippi gopher frog are essential for the conservation of the species.

We have determined that, with proper protection and management, the areas we are proposing for critical habitat are adequate for the conservation of the species based on our current understanding of the species' requirements. However, as discussed in the **Critical Habitat** section above, we recognize that designation of critical habitat may not include all habitat areas that we may eventually determine are necessary for the recovery of the species and that for this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

We delineated the critical habitat unit boundaries using the following steps:

(1) We used digital aerial photography using ArcMap 9.3.1 to map the specific location of the breeding site occupied by the Mississippi gopher frog at the time of listing, and those locations of potential breeding sites outside the geographical area occupied by the species at the time it was listed, both occupied and not occupied, that were determined to be essential for the conservation of the species.

(2) We delineated proposed critical habitat areas by buffering the above locations by a distance of 350 m (1,148 ft) where possible to incorporate all PCEs within the critical habitat boundaries.

(3) We used aerial imagery and ArcMap to connect critical habitat areas within 1,000 m (3,281 ft) of each other to create metapopulation structure where possible.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas, such as lands covered by buildings, roads, and other structures, because such lands lack PCEs for the Mississippi gopher frog. 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, 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 and biological features in the adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing to designate 11 units totaling approximately 792 ha (1,957 ac) as critical habitat for the Mississippi gopher frog. The critical habitat areas described below constitute our best assessment of areas that currently meet the definition of critical habitat for the Mississippi gopher frog. Table 1 identifies the proposed units for the species and shows the occupancy of the subunits within the proposed designated areas.

TABLE 1. OCCUPANCY OF MISSISSIPPI GOPHER FROG PROPOSED CRITICAL HABITAT UNITS WITH AREA ESTIMATES (HECTARES (HA) AND ACRES (AC)). TOTALS MAY NOT MATCH DUE TO ROUNDING.

Unit	County	Occupied at Time of Listing	Currently Occupied (but not known to be occupied at the time of listing)	Currently Unoccupied	Total Unit Area
1	Harrison	39 ha (96 ac)		238 ha (588 ac)	277 ha (685 ac)
2	Harrison			39 ha (96 ac)	39 ha (96 ac)
3	Jackson		39 ha (96 ac)	72 ha (178 ac)	111 ha (274 ac)
4	Jackson		39 ha (96 ac)	28 ha (69 ac)	67 ha (166 ac)
5	Jackson			39 ha (96 ac)	39 ha (96 ac)
6	Jackson		39 ha (96 ac)		39 ha (96 ac)
7	Forrest			39 ha (96 ac)	39 ha (96 ac)
8	Forrest			39 ha (96 ac)	39 ha (96 ac)
9	Perry			64 ha (158 ac)	64 ha (158 ac)
10	Perry			39 ha (96 ac)	39 ha (96 ac)
11	Perry			39 ha (96 ac)	39 ha (96 ac)
All Units	All Counties	39 ha (96 ac)	117 ha (289 ac)	636 ha (1,572 ac)	792 ha (1,957 ac)

Table 2 provides the approximate area and ownership encompassed within each critical habitat unit determined to meet the definition of critical habitat for the Mississippi gopher frog. Hectare and acre values were individually computer-

generated using GIS software, rounded to nearest whole number, and then summed.

TABLE 2. PROPOSED CRITICAL HABITAT UNITS WITH AREA ESTIMATES (HECTARES (HA) AND ACRES (AC)) AND LAND OWNERSHIP FOR THE MISSISSIPPI GOPHER FROG. TOTALS MAY NOT MATCH DUE TO ROUNDING.

Unit	County	Ownership			Total Area
		Federal	State	Private	
1	Harrison	273 ha(675 ac)		4 ha (10 ac)	277 ha (685 ac)
2	Harrison	39 ha (96 ac)			39 ha (96 ac)
3	Jackson			111 ha (274 ac)	111 ha (274 ac)
4	Jackson			67 ha (166 ac)	67 ha (166 ac)
5	Jackson	39 ha (96 ac)			39 ha (96 ac)
6	Jackson		39 ha (96 ac)		39 ha (96 ac)
7	Forrest	39 ha (96 ac)			39 ha (96 ac)
8	Forrest	39 ha (96 ac)			39 ha (96 ac)
9	Perry	56 ha (138 ac)		8 ha (20 ac)	64 ha (158 ac)
10	Perry	39 ha (96 ac)			39 ha (96 ac)
11	Perry	39 ha (96 ac)			39 ha (96 ac)
Total	All Counties	563 ha (1,391 ac)	39 ha (96 ac)	190 ha (470 ac)	792 ha (1,957 ac)

We present brief descriptions of each unit and reasons why they meet the definition of critical habitat below.

Unit 1: Harrison County, Mississippi

Unit 1 encompasses 277 ha (685 ac) on Federal and private lands in Harrison County, Mississippi. This unit, between U.S. Hwy. 49 and Old Hwy. 67, is approximately 0.9 km (0.56 mi) north of the Biloxi River. It is located approximately 3.2 km (2 mi) east of U.S. Hwy. 49 and approximately 2.8 km (1.75 mi) west of Old Hwy. 67. Within this unit, approximately 273 ha (675 ac) are in the DeSoto National Forest and 4 ha (10 ac) are in private ownership.

Thirty-nine ha (96 ac) of Unit 1 are located around the only breeding pond (Glen's Pond) known for the Mississippi gopher frog when it was listed in 2001 and, as such, are within the geographical area of the species occupied at the time of listing. Glen's Pond and the habitat surrounding it, the majority of which is on the DeSoto National Forest, support most of the known Mississippi gopher frog populations. Threats to the Mississippi gopher frog and its habitat in areas of Unit 1, within the geographical area of the species occupied at the time of listing, that may require special management and protection of PCEs 1, 2, and 3, include the potential of: Fire suppression and low fire frequencies; detrimental alterations in forestry practices that could destroy below-ground soil structures such as stump removal; hydrologic changes resulting from ditches, and/or adjacent highways and roads that could alter the ecology of the breeding pond and surrounding terrestrial habitat; wetland degradation; random effects of drought or floods; off-road vehicle use; and gas, water, electrical power, and sewer easements. On portions of Unit 1 within the geographical area of the species occupied at the time of listing, and within private ownership, special management is needed to address the threats of direct agricultural and urban development (see also discussion in **Special Management Considerations or Protections** section).

Most of Unit 1 (238 ha (588 ac)) is currently unoccupied. However, this unoccupied area consists of areas, within 1,000 m (3,281 ft) of each other or Glen's Pond, that we believe will create metapopulation structure and protect the Mississippi gopher frog from extinction. The unoccupied area surrounds three ponds on the DeSoto National Forest given the names of Reserve Pond, Pony Ranch Pond, and New Pond during on-going recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog is at high risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the species because the ponds (PCE 1) and the surrounding uplands (PCEs 2 and 3) are suitable habitat within the dispersal range of the Mississippi gopher frog and thus provide the potential of establishing new breeding ponds and metapopulation structure which will support recovery of the species.

Unit 2: Harrison County, Mississippi

Unit 2 encompasses 39 ha (96 ac) on Federal land in Harrison County, Mississippi. This unit is located on the DeSoto National Forest approximately 8 km (5 mi) east of Old Hwy. 67 and approximately 8.5 km (5.3 mi) southeast of the community of Success.

Unit 2 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area surrounds a pond on the DeSoto National Forest given the name of Carr Bridge Road Pond during ongoing recovery initiatives when it was selected as a Mississippi gopher frog translocation site. The U.S. Forest Service is actively managing this area to

benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 3: Jackson County, Mississippi

Unit 3 encompasses 111 ha (274 ac) on private land in Jackson County, Mississippi. This unit is located approximately 0.3 km (0.2 mi) north of Interstate 10 and approximately 1.6 km (1 mi) west of State Hwy. 57.

Unit 3 is not within the geographic range of the species occupied at the time of listing and contains both areas that are currently occupied and areas that are currently unoccupied. Thirty-nine ha (96 ac) of Unit 3 are currently occupied as a result of translocation efforts conducted in 2004, 2005, 2007, and 2008. Seventy-two 72 ha (178 ac) of Unit 3 are currently unoccupied. Unit 3 consists of three ponds and their surrounding upland areas and is on private land being managed as a wetland mitigation bank. It is within the acquisition boundary of the Mississippi Sandhill Crane National Wildlife Refuge and actively being managed by the landowners to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the species because the pond (PCE 1) and the surrounding uplands (PCEs 2 and 3) have proven to be suitable habitat for establishing a Mississippi gopher frog population, this area also provides additional breeding ponds (PCE 1) and surrounding uplands (PCEs 2 and 3) which are suitable habitats within the dispersal range of the occupied site, and this area also provides metapopulation structure which will support recovery of the species.

Unit 4: Jackson County, Mississippi

Unit 4 encompasses 67 ha (ac) on private land in Jackson County, Mississippi. This unit is located approximately 10.8 km (6.8 mi) north of Interstate 10. It is 0.47 km (0.3 mi) north of Jim Ramsey Road, approximately 3.4 km (2 mi) west of State Hwy. 57 and 6.2 km (3.9 mi) west of the community of Vancleave.

Unit 4 is not within the geographic range of the species occupied at the time of listing and contains both areas that are currently occupied and areas that are currently unoccupied. Thirty-nine ha (96 ac) of Unit 4 are located around a breeding pond, designated Mike's Pond, that was discovered to be occupied in 2004, subsequent to the listing of the Mississippi gopher frog. The remaining balance (28 ha (69 ac)) of Unit 4 is not currently occupied. This portion of Unit 4 contains an additional pond which represents a potential Mississippi gopher frog breeding site and also connectivity habitat between it and Mike's Pond. Unit 4 is being actively managed by the landowners to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation from stochastic events, such as disease or drought. Maintaining this area of occupied habitat, and suitable habitat into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the species because it represents habitat naturally occupied by the Mississippi gopher frog (PCEs 1, 2, and 3), and provides an additional pond (PCE 1) and surrounding uplands (PCEs 2 and 3) which are suitable habitats within the dispersal range of the occupied site. Thus, this area provides for the potential establishment of a new breeding pond and metapopulation structure which will support recovery of the species.

Unit 5: Jackson County, Mississippi

Unit 5 encompasses 39 ha (96 ac) on Federal land in Jackson County, Mississippi. This unit is located on the Ward Bayou Wildlife Management Area (WMA) approximately 5.2 km (3.3 mi) northeast of State Hwy. 57 and the community of Vancleave. This land is owned by the Army Corps of Engineers (Corps) and managed by the Mississippi Department of Wildlife, Fisheries, and Parks (MDWFP).

Unit 5 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area consists of a pond and its associated uplands on the WMA and has been given the name of Mayhaw Road Pond during ongoing recovery initiatives. Unit 5 is being actively managed by the Corps and MDWFP to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area of suitable habitat, into which Mississippi gopher frogs could be translocated, is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the species because the pond (PCE 1) and the surrounding uplands (PCEs 2 and 3) are suitable habitat for attempting to establish a Mississippi gopher frog population in support of recovery of the species.

Unit 6: Jackson County, Mississippi

Unit 6 encompasses 39 ha (96 ac) on State land in Jackson County, Mississippi. This unit is located on 16th section land, approximately 4.4 km (2.8 mi) east of State Hwy. 63, 4.5 km (2.8 mi) west of the Escatawpa River, and 4.0 km (2.5 mi) northeast of Helena, Mississippi. It is held in trust by the state of Mississippi as a local funding source for education in Jackson County. The local Jackson County School board has jurisdiction and control of the land.

Unit 6 is not within the geographic range of the species occupied at the time of listing but is currently occupied. Unit 6 contains a breeding pond, designated McCoy's Pond, which was discovered subsequent to the listing of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area of currently occupied habitat is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the species because it represents habitat naturally occupied by the Mississippi gopher frog (PCEs 1,

2, and 3) and will support recovery of the species.

Unit 7: Forrest County, Mississippi

Unit 7 encompasses 39 ha (96 ac) on Federal land in Jackson County, Mississippi. This unit is located on the DeSoto National Forest approximately 2.1 km (1.3 mi) east of U.S. Hwy. 49, approximately 1.9 km (1.2 mi) south of Black Creek, and approximately 3.2 km (2 mi) south of the community of Brooklyn, Mississippi.

Unit 7 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area surrounds a pond on the DeSoto National Forest selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future reintroduction of the species in support of Mississippi gopher frog recovery.

Unit 8: Forrest County, Mississippi

Unit 8 encompasses 39 ha (96 ac) on Federal land in Forrest County, Mississippi. This unit is located on the DeSoto National Forest approximately 4.3 km (2.7 mi) east of U.S. Hwy. 49, approximately 4.6 km (2.9 mi) south of Black Creek, and approximately 6.1 km (3.8 mi) southeast of the community of Brooklyn, Mississippi.

Unit 8 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. This area surrounds a pond on the DeSoto National Forest selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 9: Perry County, Mississippi

Unit 9 encompasses 56 ha (138 ac) on Federal land and 8 ha (20 ac) on private land in Perry County, Mississippi. This unit is located on the DeSoto National Forest at the intersection of Benndale Road and Mars Hill Road, approximately 2.6 km (1.6 mi) northwest of the intersection of the Perry County, Stone County, and George County lines and approximately 7.2 km (4.5 mi) north of State Hwy. 26.

Unit 9 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. Unit 9 surrounds two ponds on the DeSoto National Forest selected as a future Mississippi gopher frog translocation sites during on-going recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog is at high risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, two potential breeding ponds (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 10: Perry County, Mississippi

Unit 10 encompasses 39 ha (96 ac) on Federal land in Perry County, Mississippi. This unit is located on the DeSoto National Forest approximately 0.5 km (0.3 mi) northeast of the intersection of the Perry County, Stone County, and George County lines, approximately 0.23 km (0.14 mi) north of Benndale Road, and approximately 6.7 km (4.2 mi) north of State Hwy. 26.

Unit 10 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. Unit 10 surrounds a pond on the DeSoto National Forest selected as a future Mississippi gopher frog translocation site during ongoing recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events, such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species' eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Unit 11: Perry County, Mississippi

Unit 11 encompasses 39 ha (96 ac) on Federal land in Perry County, Mississippi. This unit is located on the DeSoto National Forest approximately 1.6 km (1.0 mi) east of Mars Hill Road, approximately 4.2 km (2.6 mi) north of the intersection of the Perry County, Stone County, and George County lines, and approximately 10.5 km (6.6 mi) north of State Hwy. 26.

Unit 11 is not within the geographic range of the species occupied at the time of listing and is currently unoccupied. Unit 11 surrounds a pond on the DeSoto National Forest selected as a future Mississippi gopher frog translocation site during on-going recovery initiatives. The U.S. Forest Service is actively managing this area to benefit the recovery of the Mississippi gopher frog. Due to its low number of remaining populations and severely restricted range, the Mississippi gopher frog may be at risk of extirpation for stochastic events such as disease or drought. Maintaining this area as suitable habitat into which Mississippi gopher frogs could be translocated is essential to decrease the potential risk of extinction of the species resulting from stochastic events and provide for the species'

eventual recovery. We determined that this area is essential to the conservation of the Mississippi gopher frog because it contains features essential to the conservation of the species, a potential breeding pond (PCE 1) and the surrounding uplands (PCEs 2 and 3), that provide habitat for future translocation of the species in support of Mississippi gopher frog recovery.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the Fifth and Ninth Circuits Courts of Appeals have invalidated our 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, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report or opinion are strictly advisory.

If we list a species or designate critical habitat, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define "reasonable and prudent alternatives" at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or 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 may sometimes 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.

Federal activities that may affect the Mississippi gopher frog or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring 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 under section 10 of the Act or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

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, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential features to an extent that appreciably reduces the conservation value of critical habitat for the Mississippi gopher frog.

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, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Mississippi gopher frog include, but are not limited to:

- Actions that would alter the hydrology or water quality of Mississippi gopher frog wetland habitats. Such activities could include, but are not limited to, discharge of fill material; release of chemicals and/or biological pollutants; clear-cutting, draining, ditching, grading, or bedding; diversion or alteration of surface or ground water flow into or out of a wetland (i.e., due to roads,

fire breaks, impoundments, discharge pipes, etc.); discharge or dumping of toxic chemicals, silt, or other pollutants (i.e., sewage, oil, pesticides, and gasoline); and use of vehicles within wetlands. These activities could destroy Mississippi gopher frog breeding sites, reduce the hydrological regime necessary for successful larval metamorphosis, and/or eliminate or reduce the habitat necessary for the growth and reproduction, and affect the prey base, of the Mississippi gopher frog.

- Forestry management actions in pine habitat that would significantly alter the suitability of Mississippi gopher frog terrestrial habitat. Such activities could include, but are not limited to, conversion of timber land to another use; timber management including clear-cutting, site preparation involving ground disturbance, prescribed burning, and unlawful pesticide application. These activities could destroy or alter the uplands necessary for the growth and development of juvenile and adult Mississippi gopher frogs.
- Actions that would significantly fragment and isolate Mississippi gopher frog wetland and upland habitats from each other. Such activities could include, but are not limited to, constructing new structures or new roads and converting forested habitat to other uses. These activities could limit or prevent the dispersal of Mississippi gopher frogs from breeding sites to upland habitat or vice versa due to obstructions to movement caused by structures, certain types of curbs, increased traffic density, or inhospitable habitat.

Exemptions

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

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

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- 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 geographical 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."

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. Therefore, we are not proposing exemption of any lands owned or managed by the Department of Defense from this designation of critical habitat for the Mississippi gopher frog.

Exclusions

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

Section 4(b)(2) of the Act states that the Secretary must designate or 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 concerned. In making that determination, the legislative history is 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 must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we determine that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

Economic Impacts

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 probable 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 the Federal eRulemaking Portal: *http://www.regulations.gov*, or by contacting the Mississippi Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and as an outcome of our analysis of this information, we may exclude areas from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Mississippi gopher frog are not owned or managed by the DOD, and therefore, we anticipate no impact to national security. There are no areas proposed for exclusion based on impacts to national security.

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 conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of, lands from critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposed rule, we have determined that there are currently no conservation plans or other management plans for the species, and the proposed designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or HCPs or other management plans from this proposed critical habitat designation. There are no areas proposed for exclusion from this proposed designation based on other relevant impacts.

Notwithstanding these decisions, as stated under the **Public Comments** section above, we request specific comments on whether any specific areas proposed for designation for the Mississippi gopher frog should be excluded under section 4(b)(2) of the Act from the final designation.

Peer Review

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

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

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing within 45 days of the publication of this proposal (see **DATES** and **ADDRESSES** sections). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first hearing.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

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 (SBREFA) of 1996), whenever an agency must 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 RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the specific information necessary to provide an adequate factual basis for determining the potential incremental regulatory effects of the designation of critical habitat for the Mississippi gopher frog to either develop the required RFA finding or provide the necessary certification statement that the designation will not have a significant impact on a substantial number of small business entities. On the basis of the development of our proposal, we have identified certain sectors and activities that may potentially be affected by a designation of critical habitat for the Mississippi gopher frog. These sectors include timber operations, industrial development, and urbanization, along with the accompanying infrastructure associated with such projects such as road, storm water drainage, and bridge and culvert construction and maintenance. We recognize that not all of these sectors qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine (1) which of these sectors or activities are or involve small business entities and (2) what extent the effects are related to the Mississippi gopher frog being listed as an endangered species under Act (baseline effects) or whether the effects are attributable to the designation of critical habitat (incremental). We believe that the potential incremental effects resulting from a designation will be small. As a consequence, following an initial evaluation of the information available to us, we do not believe that there will be a significant impact on a substantial number of small business entities resulting from this designation of critical habitat for the Mississippi gopher frog. However, we will be conducting a thorough analysis to determine if this may in fact be the case. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact their business. Therefore, we defer our RFA finding on this proposed designation until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866.

As discussed above, this draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded

that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

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:

(a) 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 for 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 jeopardize the continued existence of the species, or 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.

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

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Mississippi gopher frog in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Mississippi gopher frog does not pose significant takings implications for lands within or affected by the proposed designation.

Federalism—Executive Order 13132

In accordance with E. O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment 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 Mississippi. The critical habitat designation may have some benefit to this government in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the essential features themselves are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, 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 E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the Mississippi gopher frog.

Paperwork Reduction Act of 1995

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 (NEPA)

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 as defined by 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)).

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:

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) 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.

Government-to-Government Relationship with Tribes

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

We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are essential for the conservation of the Mississippi gopher frog. Therefore, we have not proposed designation of critical habitat for the Mississippi gopher frog on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Based on an analysis of areas included in this proposal, we determined that this proposed rule to designate critical habitat for the Mississippi gopher frog is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.govand* upon request from the Field Supervisor, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author(s)

The primary authors of this package are staff members of the Mississippi Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for "Frog, Mississippi gopher" under AMPHIBIANS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Frog, Mississippi gopher	*Rana sevosa*	U.S.A. (AL,LA,MS)	Whereever found west of Mobile and Tombigbee Rivers in AL, MS, and LA	E	718	17.95(d)	NA
*	*	*	*	*	*	*	

3. In § 17.95(d), add an entry for "Mississippi gopher frog" (*Rana sevosa*) in the same alphabetical order as the species appears in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Mississippi gopher frog *(Rana sevosa)*

(1) Critical habitat units are depicted for Forrest, Harrison, Jackson, and Perry Counties in Mississippi, on the maps below.

(2) The primary constituent elements of critical habitat for the Mississippi gopher frog are:

(i) Breeding ponds, geographically isolated from other waterbodies and embedded in forests historically dominated by longleaf pine communities, that are small (generally <0.4 to 4.0 hectares (ha) (<1 to 10 acres (ac)), ephemeral, and acidic. Specific conditions necessary in breeding ponds to allow for successful reproduction of Mississippi gopher frogs are:

(A) An open canopy with emergent herbaceous vegetation for egg attachment;

(B) An absence of large, predatory fish that prey on frog larvae;

(C) Water quality such that frogs, their eggs, or larvae are not exposed to pesticides or chemicals and sediment associated with road runoff; and

(D) Surface water that lasts for a minimum of 195 days during the breeding season to allow a sufficient period for larvae to hatch, mature, and metamorphose.

(ii) Upland forested nonbreeding habitat historically dominated by longleaf pine, adjacent and accessible to and from breeding ponds, that is maintained by fires frequent enough to support an open canopy and abundant herbaceous ground cover and gopher tortoise burrows, small mammal burrows, stump holes, or other underground habitat that the Mississippi gopher frog depends upon for food, shelter, and protection from the elements and predation.

(iii) Accessible upland connectivity habitat between breeding and nonbreeding habitats to allow for Mississippi gopher frog movements between and among such sites and that is characterized by an open canopy and abundant native herbaceous species and subsurface structure which provides shelter for Mississippi gopher frogs during seasonal movements, such as that created by deep litter cover, clumps of grass, or burrows.

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

(4) *Critical habitat unit maps.* Maps were developed from USGS 7.5' quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) *Note:* Index Map (Map 1) follows:

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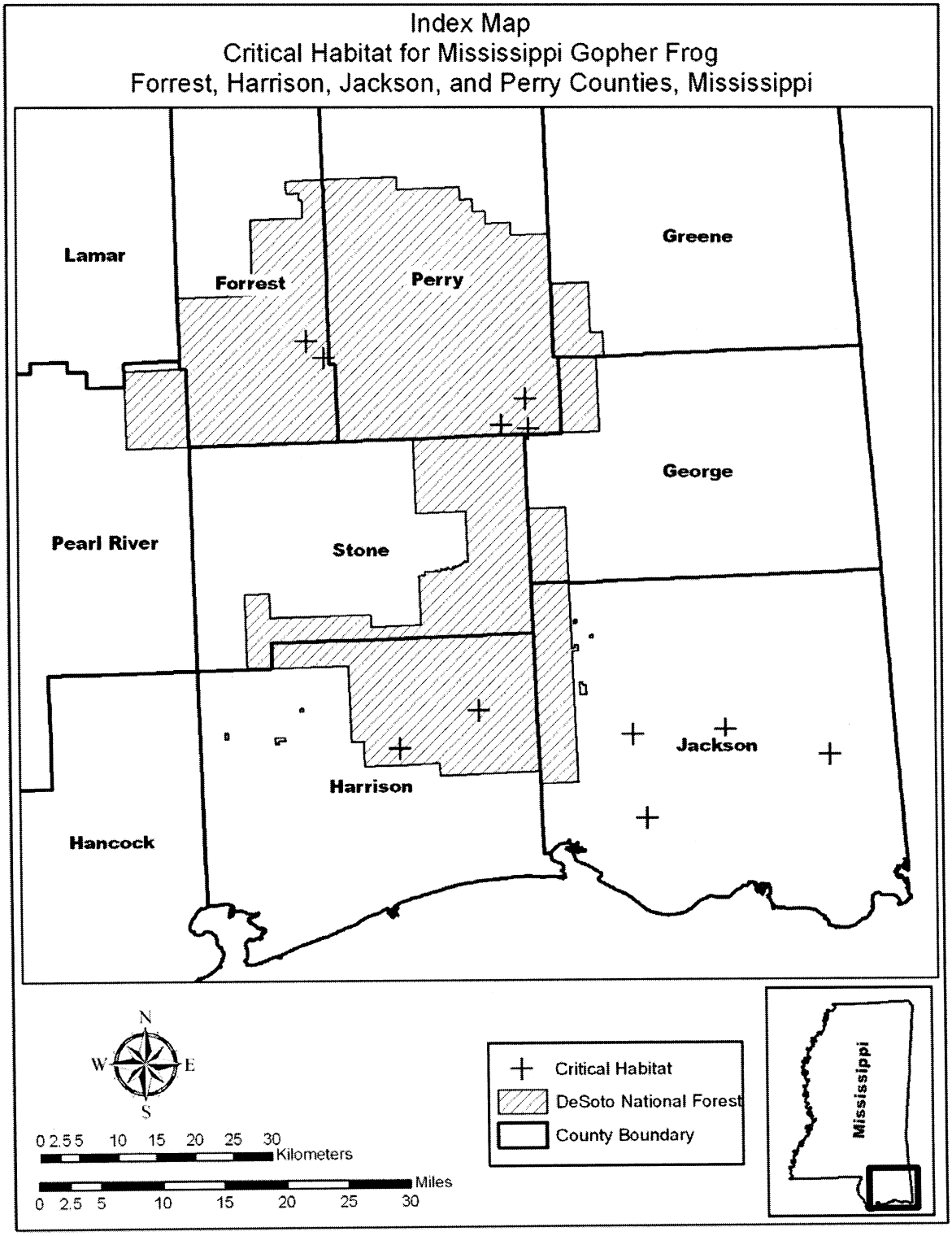


(6) Unit 1: Harrison County, Mississippi.

(i) Unit 1 from USGS 1:24,000 scale quadrangle map, Success, Mississippi.

[Reserved for textual description of Unit 1.]

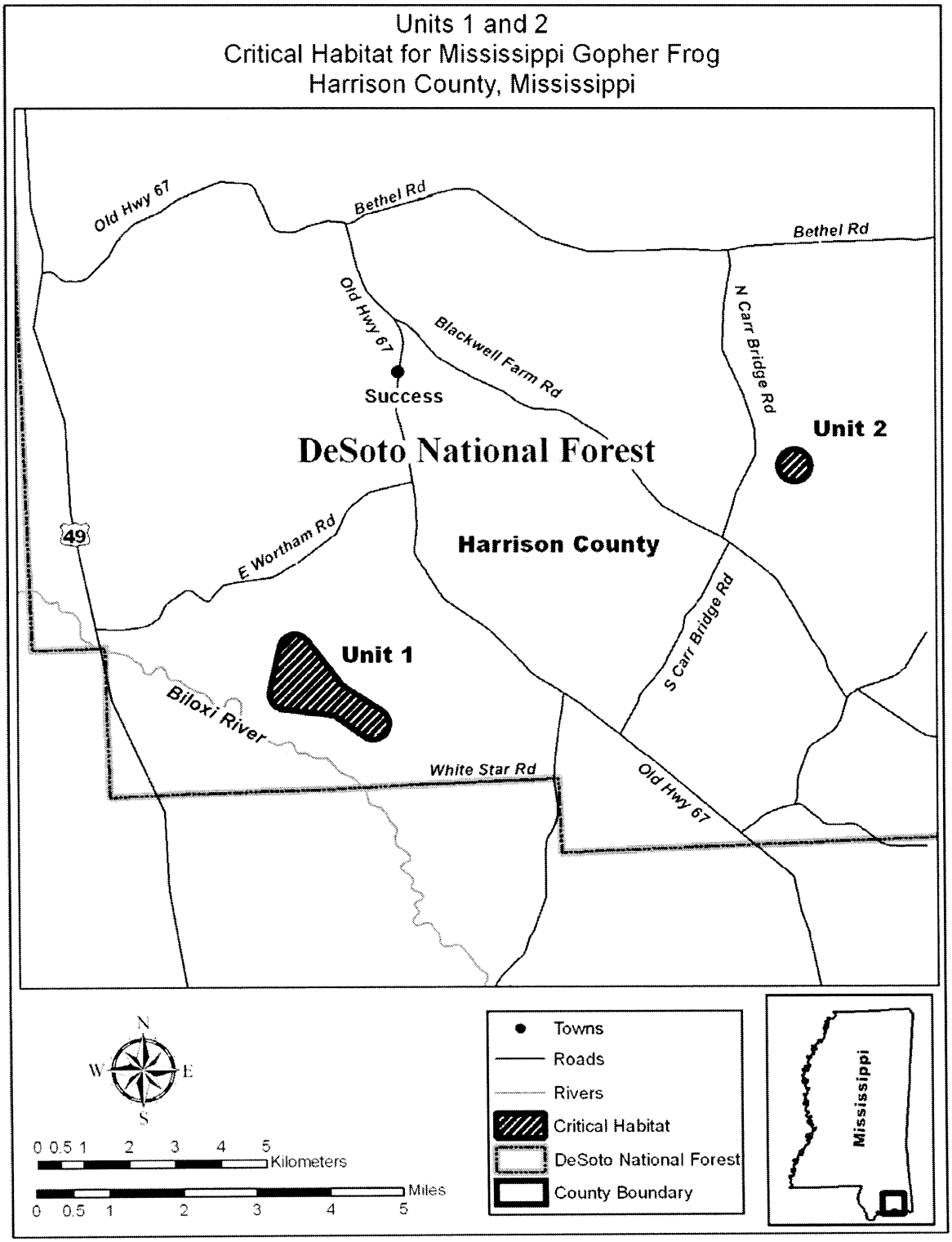
(ii) *Note:* Map of Unit 1 is provided at paragraph (7)(ii) of this entry.

(7) Unit 2: Harrison County, Mississippi.

(i) Unit 2 from USGS 1:24,000 scale quadrangle map, White Plains, Mississippi.

[Reserved for textual description of Unit 2.]

(ii) *Note*: Map of Units 1 and 2 follows:



(8) Unit 3: Jackson County, Mississippi.

(i) Unit 3 from USGS 1:24,000 scale quadrangle map Gautier North, Mississippi.

[Reserved for textual description of Unit 3.]

(ii) *Note:* Map depicting Unit 3 is provided at paragraph (10)(ii) of this entry.

(9) Unit 4: Jackson County, Mississippi.

(i) Unit 4 from USGS 1:24,000 scale quadrangle map Latimer, Mississippi.

[Reserved for textual description of Unit 4.]

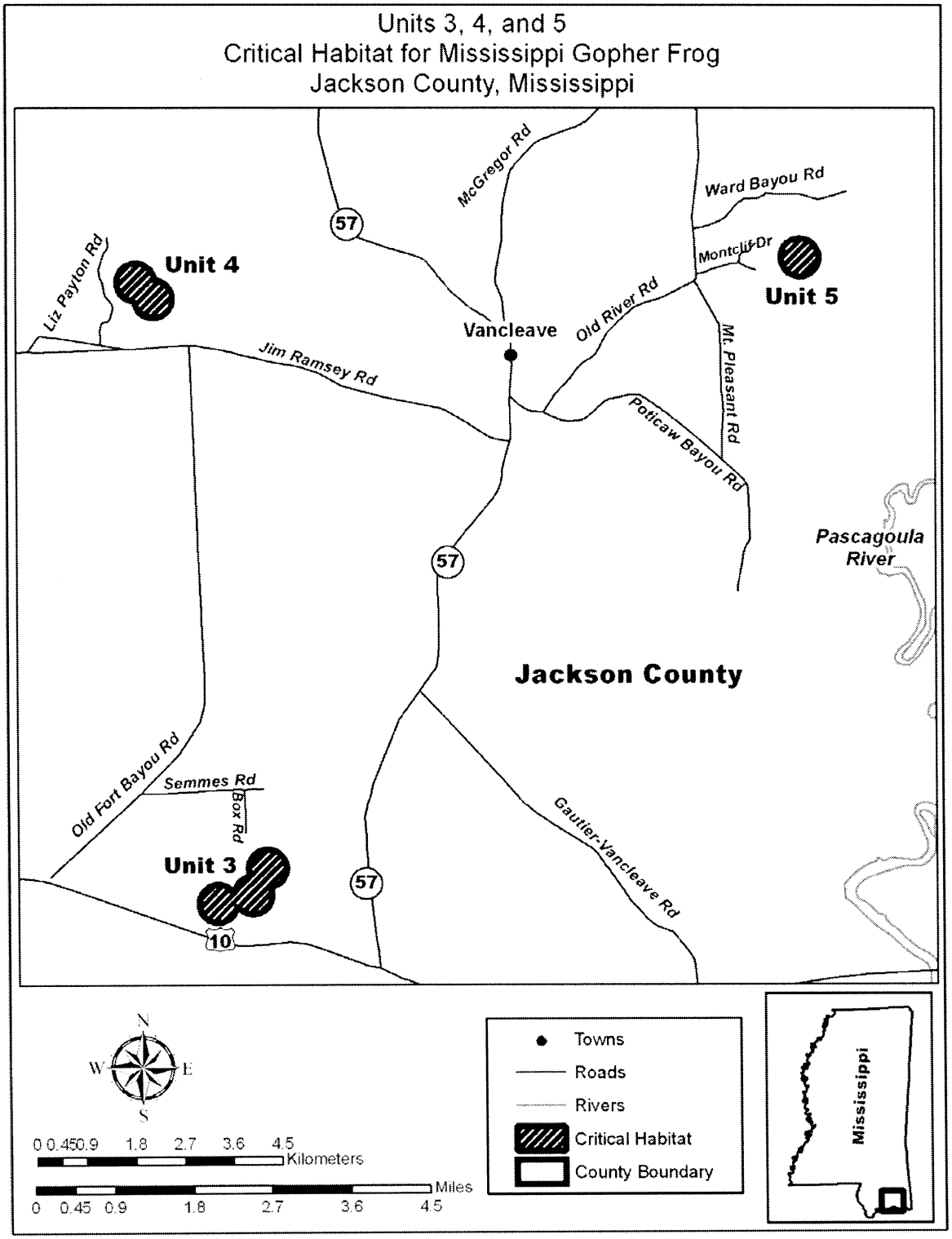
(ii) *Note:* Map depicting Unit 4 is provided at paragraph (10)(ii) of this entry.

(10) Unit 5: Jackson County, Mississippi.

(i) Unit 5 from USGS 1:24,000 scale quadrangle map Vancleave, Mississippi.

[Reserved for textual description of Unit 5.]

(ii) *Note*: Map of Units 3, 4, and 5 follows:

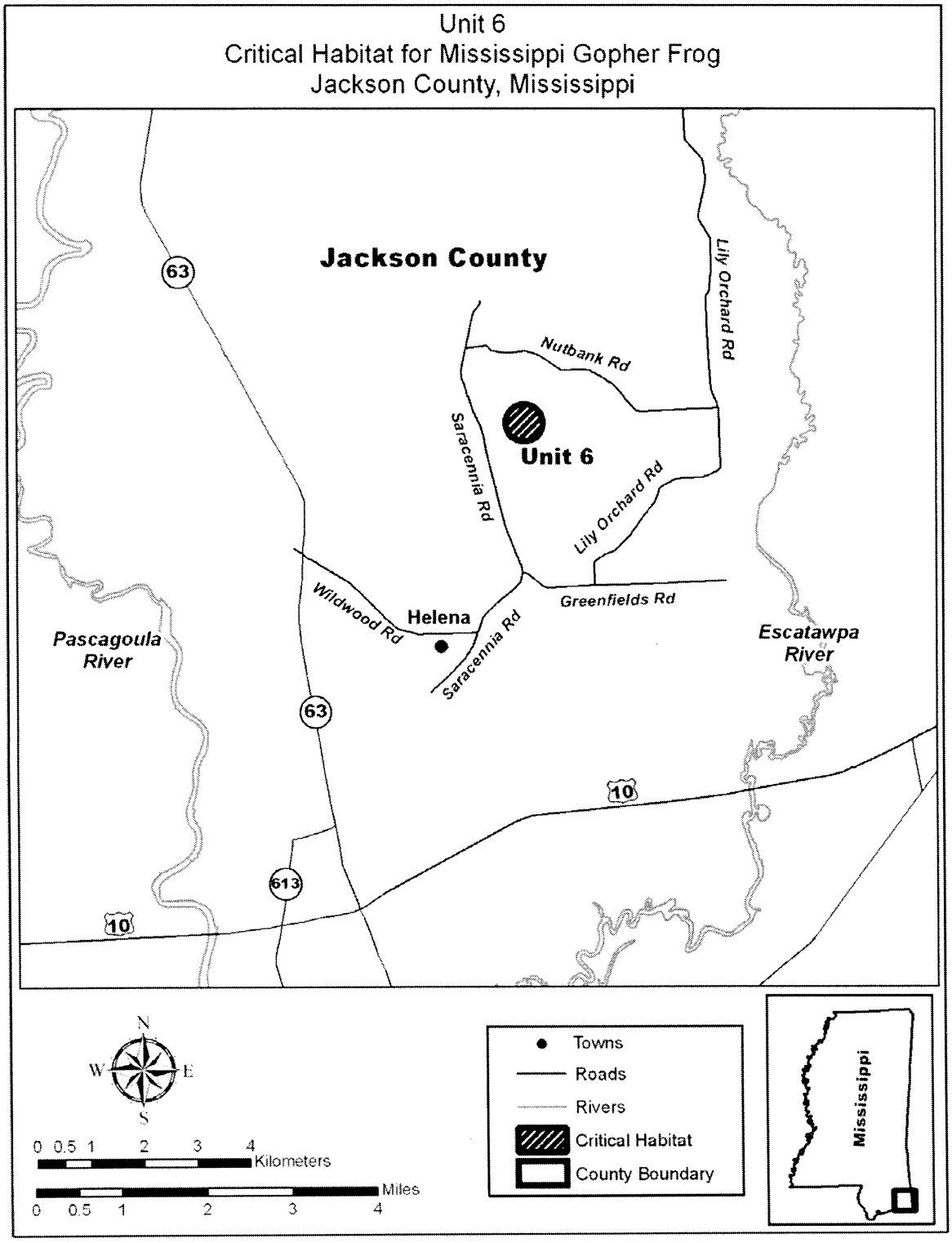


(11) Unit 6: Jackson County, Mississippi.

(i) Unit 6 from USGS 1:24,000 scale quadrangle map Big Point, Mississippi.

[Reserved for textual description of Unit 6.]

(ii) *Note*: Map of Unit 6 follows:



(12) Unit 7: Forrest County, Mississippi.

(i) Unit 7 from USGS 1:24,000 scale quadrangle map Brooklyn, Mississippi.

[Reserved for textual description of Unit 7.]

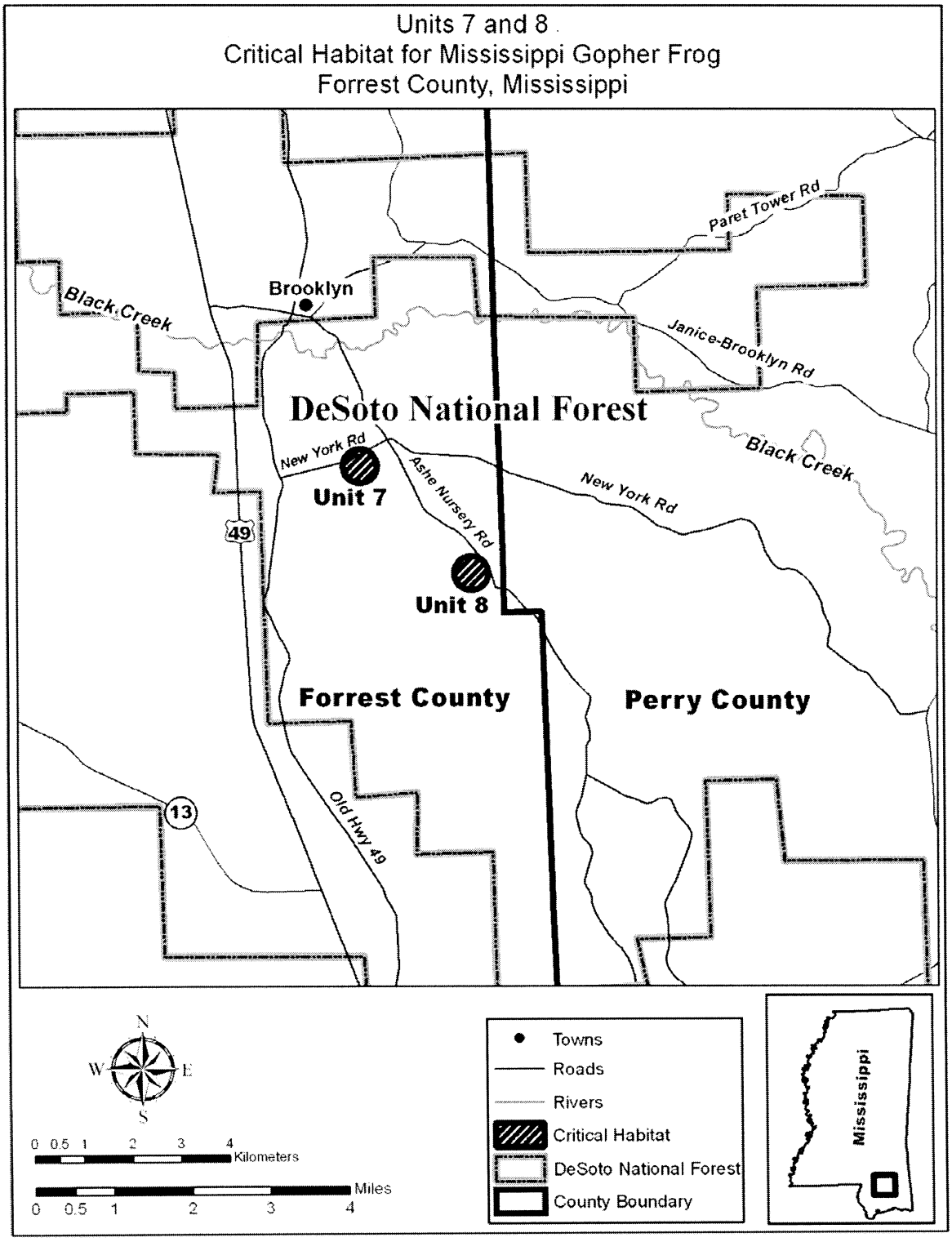
(ii) *Note:* Map depicting Unit 7 is provided at paragraph (13)(ii) of this entry.

(13) Unit 8: Jackson County, Mississippi.

(i) Unit 8 from USGS 1:24,000 scale quandrangle map Brooklyn, Mississippi.

[Reserved for textual description of Unit 8.]

(ii) *Note*: Map of Units 7 and 8 follows:



(14) Unit 9: Perry County, Mississippi.

(i) Map unit 9 from USGS 1:24,000 scale quadrangle map Barbara, Mississippi.

[Reserved for textual description of Unit 9.]

(ii) *Note:* Map depicting Unit 9 is provided at paragraph (16)(ii) of this entry.

(15) Unit 10: Perry County, Mississippi.

(i) Map unit 10 from USGS 1:24,000 scale quadrangle map Barbara, Mississippi.

[Reserved for textual description of Unit 10.]

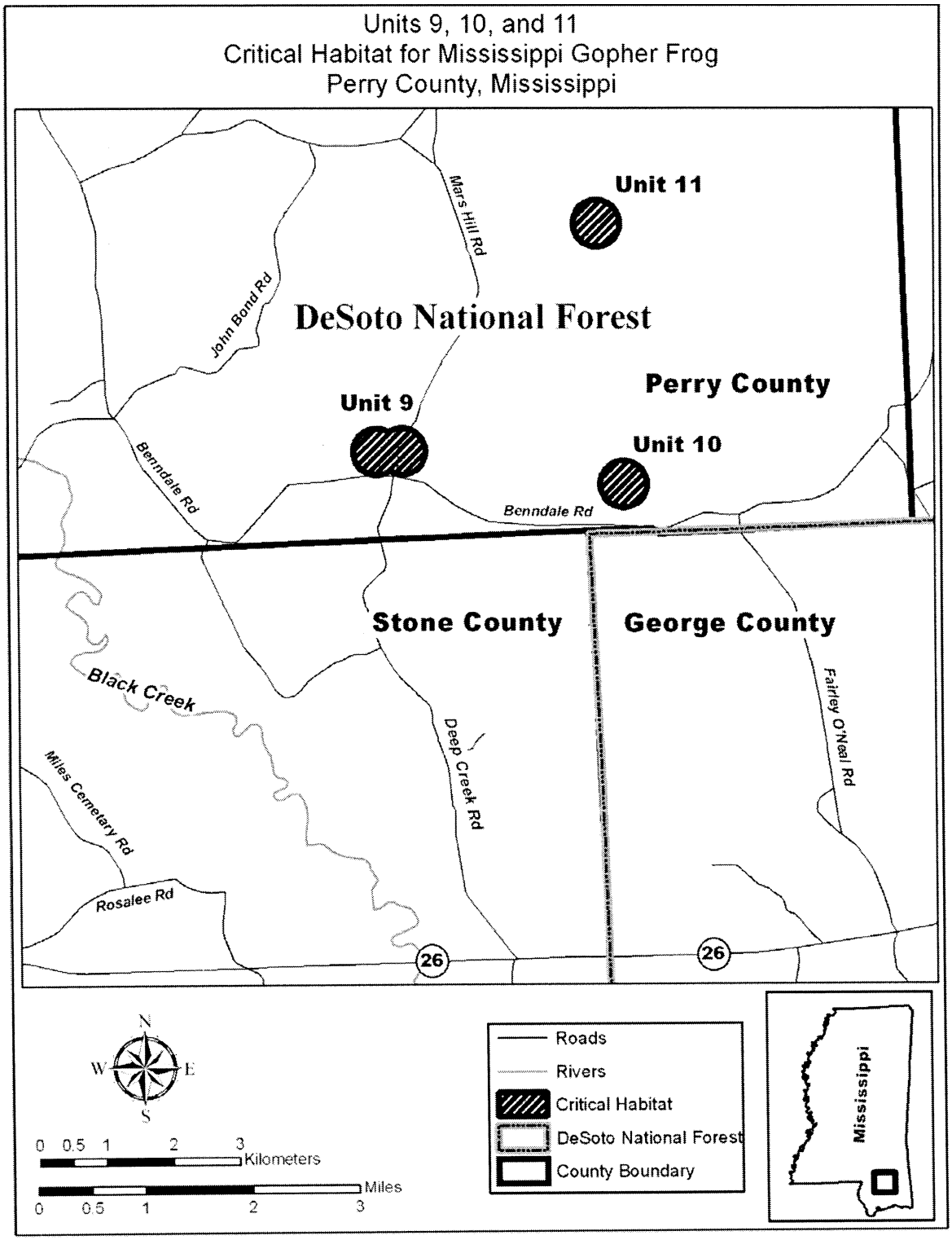
(ii) *Note:* Map depicting Unit 10 is provided at paragraph (16)(ii) of this entry.

(16) Unit 11: Perry County, Mississippi.

(i) Map unit 11 from USGS 1:24,000 scale quadrangle map Barbara, Mississippi.

[Reserved for textual description of Unit 11.]

(ii) *Note*: Map of Units 9, 10, and 11 follows:



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Dated: May 17, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–13359 Filed 6–2– 10; 8:45 am]

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