

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

[Docket No. FWS-R4-ES-2019-0106;  
FF09E21000 FXES1111090FEDR 234]

RIN 1018-BE10

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Endangered Florida Bonneted Bat**

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

**ACTION:** Revised proposed rule; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are revising our proposed designation of critical habitat for the Florida bonneted bat (*Eumops floridanus*) under the Endangered Species Act of 1973 (Act), as amended. In response to new information we received and public comments on our June 10, 2020, proposed rule, we are now proposing to designate approximately 1,174,011 acres (475,105 hectares) in 13 Florida counties as critical habitat for the species. We also announce the availability of a draft economic analysis (DEA) of the revised proposed designation of critical habitat for the Florida bonneted bat. We request comments from all interested parties on this revised proposed rule and the associated DEA. Comments submitted on our June 10, 2020, proposed rule need not be resubmitted as they will be fully considered in the preparation of the final rule. If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat.

**DATES:** We will accept comments on this revised proposed rule and the DEA that are received or postmarked on or before January 23, 2023. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 6, 2023.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R4-ES-2019-0106, which is the docket number for this rulemaking. Then, click on the Search button. On the

resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2019-0106, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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

*Availability of supporting materials:* The DEA and other supporting documents are included in the decision file and are available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0106. Coordinates or plot points or both from which the critical habitat maps are generated are available at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0106 and the Florida Ecological Services Field Office website at <https://www.fws.gov/office/florida-ecological-services/library>.

**FOR FURTHER INFORMATION CONTACT:**

Lourdes Mena, Classification and Recovery Division Manager, U.S. Fish and Wildlife Service, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256; telephone (904) 731-3134. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Why we need to publish a rule.* Under the Endangered Species Act, when we determine that any species is an endangered or threatened species, we are required to designate critical habitat, to the maximum extent prudent and determinable. Designations of critical habitat can only be completed by issuing a rule.

*What this document does.* This document revises the proposed designation of critical habitat for the Florida bonneted bat to include a total of approximately 1,174,011 acres

(475,105 hectares) in portions of 13 Florida counties. On October 2, 2013, we published in the **Federal Register** (78 FR 61004) a final rule listing the Florida bonneted bat as an endangered species. On June 10, 2020, we published in the **Federal Register** (85 FR 35510) a proposed rule to designate critical habitat for this species. This document revises the proposed designation of critical habitat for the Florida bonneted bat.

*The basis for our action.* Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

*Draft economic analysis of the revised proposed designation of critical habitat.* In order to consider the economic impacts of critical habitat for the Florida bonneted bat, we compiled information pertaining to the potential incremental economic impacts for this revised proposed critical habitat designation. The information we used in determining the economic impacts of the revised proposed critical habitat is summarized in this revised proposed rule (see *Consideration of Economic Impacts*, below) and is available at <https://www.regulations.gov> at Docket No. FWS-R4-ES-2019-0106. We are soliciting public comments on the economic information provided and any other potential economic impacts of this revised proposed designation. We will continue to reevaluate the potential economic impacts between this proposal and our final designation.

*Public comment.* We requested and received public comments on our June 10, 2020, proposed rule to designate critical habitat for the Florida bonneted bat. Those comments primarily consist of requests for exclusion, requests for the designation of additional areas, and comments on the physical or biological features and associated methodology used to identify proposed units (see *New Information and Revisions to*

Previously Proposed Critical Habitat, below). Those comments are already part of the public record of this rulemaking proceeding and are available for public viewing at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0106. We now seek comments and solicit information from the public on this revised proposed designation to make sure we consider the best scientific and commercial information available in developing our final designation. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. We will provide responses to comments we received during both public comment periods in our final rule.

*Peer review.* We sought peer review on our June 10, 2020, proposed rule and received comments from two reviewers (see New Information and Revisions to Previously Proposed Critical Habitat, below). We are again seeking comments from independent specialists to ensure that this revised proposed designation of critical habitat for the Florida bonneted bat is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this revised critical habitat proposal.

### Information Requested

We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this revised proposed rule. Please note that comments submitted on our June 10, 2020, proposed rule need not be resubmitted as they will be fully considered in the preparation of the final rule. Additionally, due to the ongoing challenges regarding the 2019 regulations, we also seek comments on whether and how applying the regulations that were in effect before the 2019 regulations would alter any of these analyses.

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 information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

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

(b) The present or threatened destruction, modification, or curtailment of a species’ habitat or range is not a threat to the species, or threats to the species’ habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(e) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

In addition, we seek comment regarding whether and how this information would differ under the factors that the pre-2019 regulations identify as reasons why designation of critical habitat may be prudent.

(2) Specific information on:

(a) The amount and distribution of Florida bonneted bat habitat;

(b) Any additional areas occurring within the range of the species (*i.e.*, Miami-Dade, Monroe, Lee, Collier, Charlotte, Polk, Osceola, Okeechobee, Highlands, Broward, Sarasota, Hardee, Glades, Palm Beach, Martin, and DeSoto Counties, Florida) that should be included in the designation because they (i) were occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (ii) were unoccupied at the time of listing and are essential for the conservation of the species.

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including information related to the impacts that noise and light pollution and pesticides usage may have on critical habitat, as well as managing for the potential effects of climate change; and

(d) For areas not occupied at the time of listing essential for the conservation of the species, we particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of the species; and

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty,

contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

We also seek comments or information regarding whether areas not occupied at the time of listing could be considered habitat for the species.

(3) Characteristics of roost trees.

(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, and the related benefits of including or excluding specific areas.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis (DEA) for the revised proposed rule is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We are particularly interested in information concerning those areas described below in tables 2 and 3. If you think we should exclude these or any additional areas, please provide information regarding the benefit of exclusion that you have not already submitted to us, as comments submitted on our June 10, 2020, proposed rule need not be resubmitted and will be fully considered in the preparation of the final rule.

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

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a final critical habitat determination.

You may submit your comments and materials concerning this proposed rule

by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0106.

Because we will consider all comments and information we receive during the comment period, our final determination may differ from this revised proposal. Based on the new information we receive (and any comments on that new information), our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion.

#### Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

#### Previous Federal Actions

Federal actions for the Florida bonneted bat that occurred prior to October 4, 2012, are outlined in our proposed listing rule for the species (see 77 FR 60750, October 4, 2012). On October 2, 2013, after consideration of the available scientific information, and peer review and public comments on

the proposed listing rule, we listed the Florida bonneted bat as an endangered species (78 FR 61004). Critical habitat was considered prudent but not determinable at the time of listing due to the lack of information on the physical or biological features essential for the species' conservation. Additional research helped define those physical or biological features, and on June 10, 2020, we proposed to designate critical habitat for the Florida bonneted bat (85 FR 35510). During the public comment period on the June 10, 2020, proposed rule, we received significant new information on genetics as well as presence and roost data; following the comment period, we developed a conservation strategy to serve as a foundation for critical habitat criteria and methodology, revised the physical or biological features essential for the conservation of the species, and revised our proposed critical habitat designation in lieu of preparing a final rule. This document presents our revised proposed critical habitat designation for the Florida bonneted bat.

#### Supporting Documents

Starting in 2016, the Service has been preparing species status assessment (SSA) reports to compile and evaluate the best scientific information available to inform listing and other decisions under the Act. Since this species was listed before this process was implemented, there was no SSA for the Florida bonneted bat at the time the proposed critical habitat designation published (June 10, 2020). A recovery outline and a conservation strategy have been prepared for this species. The Florida Bonneted Bat Recovery Outline is a brief document that broadly sketches the interim conservation and management program for the Florida bonneted bat during the time between the final listing under the Act and completion of a recovery plan. The Florida Bonneted Bat Conservation Strategy provides a technical foundation for recovery strategies, summarizing the best scientific data available concerning the status of the species and threats affecting the species, and outlines goals and objectives for achieving recovery of the Florida bonneted bat. These documents have been prepared based on input and information from researchers and species experts.

Additional documents that we considered in revising our proposed critical habitat designation include a list of conservation lands that overlap with the proposed designation, conservation and natural resource management plans for areas we are considering for exclusion, and a summary of the habitat

analysis conducted to inform delineation of the proposed critical habitat units. All of these supporting documents are available at <https://www.regulations.gov> under Docket No. FW-R4-ES-2019-0106.

#### Background

The purpose of this document is to discuss only those topics directly relevant to this revised proposed critical habitat designation. For more information on the species, its habitat, and previous Federal actions concerning the Florida bonneted bat, refer to the final listing rule published in the **Federal Register** on October 2, 2013 (78 FR 61004) and the proposed critical habitat rule published in the **Federal Register** on June 10, 2020 (85 FR 35510).

In 2019, jointly with the National Marine Fisheries Service, the Service issued final rules that revised the regulations in 50 CFR parts 17 and 424 regarding how we add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (84 FR 45020 and 84 FR 44752; August 27, 2019; collectively, the 2019 regulations). However, on July 5, 2022, the U.S. District Court for the Northern District of California vacated the 2019 regulations (*Center for Biological Diversity v. Haaland*, No. 4:19-cv-05206-JST, Doc. 168 (N.D. Cal. July 5, 2022) (*CBD v. Haaland*)), reinstating the regulations that were in effect before the effective date of the 2019 regulations as the law governing species classification and critical habitat decisions. Subsequently, on September 21, 2022, the U.S. Circuit Court of Appeals for the Ninth Circuit stayed the district court's July 5, 2022, order vacating the 2019 regulations until a pending motion for reconsideration before the district court is resolved (In re: Cattleman's Ass'n, No. 22-70194). The effect of the stay is that the 2019 regulations are the governing law as of September 21, 2022.

Due to the continued uncertainty resulting from the ongoing litigation, we also undertook an analysis of whether the proposal would be different if we were to apply the pre-2019 regulations. That analysis, which we described in a separate memo in the decisional file and posted on <https://www.regulations.gov>, concluded that we would have reached the same proposal if we had applied the pre-2019 regulations because under either regulatory scheme we find that critical habitat is prudent and that the occupied areas proposed for the Florida bonneted bat are adequate to ensure the conservation of the species.

In our June 10, 2020, proposed rule, we proposed to designate critical habitat

in four units encompassing approximately 1,478,333 acres (ac) (598,261 hectares (ha)) in portions of 10 Florida counties. In addition, we announced the availability of a DEA of the proposed critical habitat designation. We accepted comments on the proposed critical habitat designation and DEA for 60 days, ending August 10, 2020. Based on information we received during the public comment period, we are revising our proposed critical habitat designation for the Florida bonneted bat. This revised proposed rule has a 60-day comment period (see **DATES**, above) to allow all interested parties to submit comments on our revised proposed critical habitat designation for the Florida bonneted bat.

### **New Information and Revisions to Previously Proposed Critical Habitat**

During the public comment period on our June 10, 2020, proposed rule, we received over 1,800 responses, as well as comments from two peer reviewers. We received comments questioning the essential physical or biological features we identified (specifically, our description of representative forest types, definition and use of “core areas,” and definition and use of a minimum patch size) and the relationship of those features to our critical habitat criteria and methodology. Because our incorporation of a minimum patch size precluded the consideration of habitat within urban Miami-Dade County, many comments addressed the importance of this area to the species and provided information (e.g., historical use, observed activity) regarding why it meets the definition of critical habitat. Comments received also addressed the need to directly incorporate all available presence information into our habitat analysis and critical habitat methodology and expressed concerns regarding a lack of redundancy provided in the proposed units for the species to withstand catastrophic events. In addition, since the proposed rule was published, we received new information regarding genetic diversity and structure of the species, as well as new presence and roost data. Upon further review of the best available information, we have decided to use average measurements to describe the characteristics of roost trees rather than the minimum measurements used in our June 10, 2020, proposed rule. In this revision, we also provide additional roost-related measurements to better reflect the characteristics required by the Florida bonneted bat.

Therefore, after fully considering the public comments we received on our June 10, 2020, proposed rule and new

information that became available after the publication of that proposed rule, we revise our proposed critical habitat designation for the Florida bonneted bat based on changes to the physical or biological features and the criteria and methodology used to identify those specific areas that constitute critical habitat. Due to the comprehensive nature of these revisions, this document presents an entirely new, revised proposed critical habitat designation for the species. The DEA for the proposed critical habitat designation has also been revised and is summarized below (see *Consideration of Economic Impacts*).

### **Physical or Biological Features Essential to the Conservation of the Species**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define “physical or biological features essential to the conservation of the species” as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount

of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; food, water, air, light, minerals, or other nutritional or physiological requirements; and habitats with appropriate disturbance regimes (for more information, see the proposed listing rule (77 FR 60750; October 4, 2012) and the Florida Bonneted Bat Conservation Strategy (see Supporting Documents)). We summarize below the more important habitat characteristics, particularly those that support the description of physical and biological features essential to the conservation of the Florida bonneted bat. For *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*, please see this section in the proposed critical habitat rule (85 FR 35510, June 10, 2020). We also consider these habitat features relative to the scale at which Florida bonneted bats use the features, allowing us to more logically organize the physical and biological features to delineate the critical habitat.

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

Due to the spatial variability of their prey, large size, and wing morphology, this species has significant spatial needs for foraging. Insect abundance, density, and community composition frequently vary across space and over time based on season and environmental conditions. As a result of this spatial variability, Florida bonneted bats may need to travel far distances and feed over large areas to satisfy dietary needs. For example, Florida bonneted bats from Fred C. Babcock-Cecil M. Webb Wildlife Management Area (Babcock-Webb WMA), on average, traveled 9.5 miles (mi) (15 kilometers (km)) from their roosts and flew 24 mi (39 km) total per night (Webb et al. 2018, p. 8; Webb 2018, pers. comm.). These bats also traveled maximum distances of over 24 mi (39 km) from their roosts and over 56 mi (90 km) total in one night (Webb et al. 2018, p. 8; Webb 2018, pers. comm.). Florida bonneted bats also require open areas for foraging due to their large body size and morphology of

their wings, which are designed for fast and efficient, but less maneuverable, flight.

This large bat relies on swarms of larger insects for feeding; thus, foraging habitat for the Florida bonneted bat consists of areas that hatch and concentrate insects of this size, including vegetated areas and waterways. These bats also frequently feed on insects from agricultural areas and golf courses (Bailey et al. 2017a, entire).

Ecologically diverse areas of suitable habitat representing the geographic extent of the species' range are also important for population growth and persistence. The major ecological communities (Myers and Ewel 1990, entire; Service 1999, entire; FNAI 2010, entire) that provide Florida bonneted bat roosting habitat in central and southern Florida include: pine rocklands (south Florida rockland, rockland pine forest, rockland hammock); cypress communities (cypress swamps, strand swamps, domes, sloughs, ponds); hydric pine flatwoods (wet flatwoods); mesic pine flatwoods; and high pine. A variety of other habitats may be used as well (Bailey et al. 2017a, entire). Diverse, open foraging habitats (e.g., prairies, riverine habitat) are also important. Adequate roosting and foraging habitats are essential to the species, as they provide the diversity necessary to allow for population resiliency following minor disturbances (e.g., loss of roost tree, cold snap) as well as more significant stochastic events (e.g., hurricane, drought, forest disease, climate change).

Structural connectivity (suitable habitat in the form of linear corridors or patches creating "stepping stones") facilitates the recolonization of extirpated populations; facilitates the establishment of new populations; and allows for natural behaviors needed for foraging, exploratory movements, and dispersal. Four genetically differentiated populations of the Florida bonneted bat have been identified (Charlotte, Polk/Osceola, Lee/Collier, and Miami-Dade Counties) (Austin et al. 2022, entire; see also Florida Bonneted Bat Conservation Strategy in Supporting Documents). While dispersal of Florida bonneted bats appears to be geographically restricted between populations, the geographic extent of the four genetically differentiated areas is not yet known, and maintaining structural connectivity to allow for ongoing and future functional connectivity (i.e., actual movement of animals and/or exchange of genes) between known populations remains important to the species for

resiliency as well as population stability and growth (Austin et al. 2022, pp. 507–508). Structural connectivity in the form of vegetated corridors with opportunities for roosting and/or foraging, vegetated river corridors and other areas with freshwater available year-round, and habitat patches such as pine rockland fragments and tree islands are needed to provide and maintain connections between regions where known Florida bonneted bat populations occur. Maintaining viable populations in each of the known genetically differentiated areas and protecting connectivity is necessary for the demographic and genetic health of the species. Therefore, it is important that this species has areas of ecologically diverse and connected habitat including sufficient amounts of open foraging habitat.

#### Cover or Shelter

The Florida bonneted bat primarily roosts in tree cavities, either as individuals or small or large colonies (Ober et al. 2017, p. 378; Braun de Torrez et al. 2020a, p. 6; 2020b, entire). Roosts provide protection from sunlight, adverse weather, and predators; sites for mating, rearing of young, social interaction and information sharing, resting, and digestion of food; and microclimate stability (Kunz 1982, entire; Ormsbee et al. 2007, pp. 130–135; Marks and Marks 2008a, p. 4; Dechmann et al. 2010, pp. 1–7; Bohn 2012, in litt.).

Florida bonneted bat roosts are difficult to locate; only 36 natural roosts have been identified (not all currently occupied), the first in 2013 (Angell and Thompson 2015, entire; Braun de Torrez et al. 2020b, entire; Braun de Torrez 2021, pers. comm.; Borkholder 2022, pers. comm.; Braun de Torrez 2022, pers. comm.). Known natural roosts have been documented in the following tree species: slash pine (*Pinus elliottii*), longleaf pine (*Pinus palustris*), bald cypress (*Taxodium distichum*), and royal palm (*Roystonea regia*) (Braun de Torrez et al. 2020b, entire). A significant proportion of known roosts are in snags of these tree species (Braun de Torrez et al. 2020b, entire). One non-volant (flightless) pup was found at the base of a live oak (*Quercus virginiana*) hours after a tree cavity was bisected (Ridgley 2020, pers. comm.); it is not known if this tree species is commonly used as a roost site or may be used particularly where suitable trees are sparse.

Upon further review of the best available information, we have modified the features relevant to roost trees to more accurately reflect the characteristics required by Florida

bonneted bat. Relative to surrounding trees, Florida bonneted bat roost trees tend to have greater overall height (averaging 57 feet (ft) (17 meters (m)), diameter (averaging 15-inch (in) (38-centimeter (cm)) diameter at breast height (dbh)), and canopy height relative to the adjacent canopy (averaging 16 ft (5 m) taller than surrounding trees) (Braun de Torrez et al. 2020b, entire; Braun de Torrez 2022, pers. comm.). The species also appears to require sufficient unobstructed space for emergence, with cavities averaging 35 ft (10.7 m) above the ground and roost trees averaging 14 ft (4 m) from the nearest tree (Braun de Torrez et al. 2020b, entire; Braun de Torrez 2022, pers. comm.), often in open or semi-open canopy and canopy gaps. Cavities may require a minimum of approximately 19 ft (5.7 m) of ground clearance (Braun de Torrez et al. 2020b, entire; Braun de Torrez 2022, pers. comm.); however, there are two instances of Florida bonneted bats using bat houses with approximately 13 ft (4 m) of ground clearance in Miami-Dade County (Ridgley 2021, unpublished data). Collectively, this indicates that this species prefers large trees with adequate space around the cavity for emergence. Solitary males may roost under loose bark, and loose or shaggy bark has been documented as a night roost (e.g., *Melaleuca*). However, Florida bonneted bats typically roost in cavities made by other species (notably woodpeckers) or by natural damage caused by fire, storms, or decay.

The Florida bonneted bat is suspected to have high roost-site fidelity. Some roosts are used for several years by Florida bonneted bat colonies, possibly decades (Myers 2013, pers. comm.; Scofield 2013a–b, pers. comm.; 2014a–b, pers. comm.; Bohn 2014, pers. comm.; Gore et al. 2015, p. 183; Angell and Thompson 2015, p. 186; Hosein 2016, pers. comm.; Webb 2017, pers. comm.; B. Myers 2018, pers. comm.; Aldredge 2019, pers. comm.). Conversely, natural roosts may frequently succumb to natural causes (i.e., hurricanes, wildfire), resulting in total loss or too much damage to allow for future roosting. At least 37 percent of the known natural roosts discovered since 2013 are now uninhabitable (due to decay, hurricanes, and other factors) (Braun de Torrez et al. 2020b, entire). Suitable roost sites are a critical resource, are an ongoing need of the species, and may be limiting population growth and distribution in certain situations. The loss of a roost site may represent a greater impact to this species

relative to some other bat species (Ober 2012, in litt.).

Florida bonneted bats also roost in artificial structures (e.g., homes with barrel-tile roofs, chimneys, barns, hangars, utility poles) and bat houses (Marks and Marks 2008b, p. 8; Morse 2008, entire; Trokey 2012a–b, pers. comm.; Gore et al. 2015, entire; see *Use of Artificial Structures (Bat Houses)* in the final listing rule (78 FR 61004, October 2, 2013, p. 61010)). Despite clear evidence of their use, artificial bat houses may not be ideal or a sufficient surrogate for natural roosts. Pup mortalities and other events (e.g., pups falling from roosts and unable to climb up metal poles or wood poles with predator guards) have raised questions about heat build-up, insulation, proper placement in the landscape, and bat house design (Crawford and O’Keefe 2021, entire). Therefore, natural roosts (i.e., live or dead trees and tree snags, especially longleaf pine, slash pine, bald cypress, and royal palm, on average 57 ft (17 m) in height and an average 15-in (38-cm) dbh that are emergent from the surrounding canopy (by an average 16 ft (5 m)) and have unobstructed space for emergence) are important habitat characteristics for this species.

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

Sites supporting the Florida bonneted bats’ breeding activities appear to be required year-round (Timm and Genoways 2004, p. 859; Ober et al. 2017, p. 382; Bailey et al. 2017b, p. 556; see also *Life History* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61005–61006) and *Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements* in the proposed critical habitat rule (85 FR 35510, June 10, 2020)). Reproductively active adults have been observed during August, December, and April capture sessions, and non-volant pups (young not yet capable of flying) have been documented in roosts in every month other than February and March (Scofield 2014b, pers. comm.; Angell and Thompson 2015, p. 186; Ridgley 2015, pers. comm.; Ober et al. 2017, pp. 381, 383–384; Gore 2017, pers. comm.; J. Myers 2018, pers. comm.; 2020, pers. comm.). Based upon these data, flightless young bonneted bats and females with high energetic demands due to pregnancy and lactation may be vulnerable to disturbance for at least 10 months of the year. Most roosting bats are sensitive to human disturbance (Kunz 1982, p. 32), and maternity colonies may be especially intolerant of disturbance (Harvey et al. 1999, p. 13; see also *Inadvertent and Purposeful*

*Impacts from Humans* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61033–61034)).

Florida bonneted bat colonies conform to a harem structure (one dominant male, several reproductively active females and their young; Ober et al. 2017, p. 382). This type of social organization, together with evidence of high roost-site fidelity, underscores the importance of roosts to this species for population maintenance, growth, and natural behaviors. Disturbance of a roost at any time can alter social dynamics and impact reproductive success (Ober et al. 2017, p. 382). Accordingly, areas where roosting and other natural behaviors can occur undisturbed are important in considering the conservation of the species.

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

Our discussion of these habitat characteristics is unchanged from the proposed rule (85 FR 35510, June 10, 2020).

#### *Habitats With Appropriate Disturbance Regimes*

The Florida bonneted bat not only requires healthy and ecologically diverse habitat; the species also needs areas with an appropriate disturbance regime. The Florida bonneted bat’s entire range is within the fire-dependent and fire-adapted landscape of central and south Florida (Noss 2018, entire). The species uses fire-dependent vegetation communities for roosting (Belwood 1992, pp. 219–220; Angell and Thompson 2015, entire; Braun de Torrez et al. 2016, p. 240) and foraging (Bailey et al. 2017a, entire; Braun de Torrez et al. 2018a–c, entire). Florida bonneted bats appear to be attracted to recently burned areas (Braun de Torrez et al. 2018a, entire); it appears that Florida bonneted bats are fire-adapted and benefit from prescribed burn programs that closely mimic historical fire regimes. Fires during the historical fire season (i.e., early wet season, April through June) at a moderate frequency (more than 3 to 5 years) appear to optimize habitat for bats in both pine flatwoods and prairies (Braun de Torrez et al. 2018b, pp. 6–9). Fire may result in an increase of suitable roosts (i.e., create more snags and cavities), more open flight space, and increased prey availability (Boyles and Aubrey 2006, pp. 111–113; Armitage and Ober 2012, pp. 107–109; O’Keefe and Loeb 2017, p. 271; Braun de Torrez et al. 2018a, p. 1120; 2018b, pp. 8–9).

Fire also has the potential to harm bats through disturbance or destruction

of roost trees (Morrison and Raphael 1993, p. 328; Dickinson et al. 2010, pp. 2196–2200). Despite the risks that Florida bonneted bats may abandon roosts, or roosts and pups may be lost during fires, it is critical for fires to occur on the landscape to maintain suitable habitat; precautions can be taken to reduce risks appropriately (see *Inadvertent Impacts from Land Management Practices*, below). Therefore, based on the information in this discussion, we identify areas of diverse habitat types and ecological communities maintained via appropriate disturbance regimes as essential physical or biological features for this species.

#### *Summary of Essential Physical or Biological Features*

We derive the specific physical or biological features essential to the conservation of Florida bonneted bat from studies of the species’ habitat, ecology, and life history as described below and further in the Florida Bonneted Bat Conservation Strategy (see Supporting Documents) and the proposed and final listing rules (77 FR 60750, October 4, 2012; 78 FR 61004, October 2, 2013). We have determined that the following physical or biological features are essential to the conservation of the Florida bonneted bat:

(1) Habitats that provide for roosting and rearing of offspring. Such habitat provides structural features for rest, digestion of food, social interaction, mating, rearing of young, protection from sunlight and adverse weather conditions, and cover to reduce predation risks for adults and young, and is generally characterized by:

(a) Live or dead trees and tree snags, especially longleaf pine, slash pine, bald cypress, and royal palm, that are on average 57 ft (17 m) in height and with an average 15-in (38-cm) dbh and that are emergent from the surrounding canopy (by an average 16 ft (5 m)); and

(b) Sufficient unobstructed space, with cavities averaging 35 ft (10.7 m) above the ground and roost trees averaging 14 ft (4 m) from the nearest tree, for Florida bonneted bats to emerge from roost trees; this may include open or semi-open canopy and canopy gaps.

(2) Habitats that provide adequate prey and space for foraging, which may vary widely across the Florida bonneted bat’s range, in accordance with ecological conditions, seasons, and disturbance regimes that influence vegetation structure and prey species’ distributions. Foraging habitat may be separate and relatively far from roosting habitat. Essential foraging habitat consists of open areas in or near areas

of high insect production or congregation, commonly including, but not limited to:

(a) Freshwater edges and freshwater herbaceous wetlands (permanent or seasonal);

(b) Prairies;

(c) Wetland and upland shrub; and/or

(d) Wetland and upland forests.

(3) A dynamic disturbance regime (e.g., fire, hurricanes, forest management) that maintains and regenerates forested habitat, including plant communities, open habitat structure, and temporary gaps, which is conducive to promoting a continual supply of roosting sites, prey items, and suitable foraging conditions.

(4) A sufficient quantity and diversity of habitats to enable the species to be resilient to short-term impacts associated with disturbance over time (e.g., drought, forest disease). This quantity and diversity are essential to provide suitable conditions despite temporary alterations to habitat quality. The ecological communities the Florida bonneted bat inhabits differ in hydrology, fire frequency/intensity, climate, prey species, roosting sites, and threats, and include, but are not limited to:

(a) Pine rocklands;

(b) Cypress communities (cypress swamps, strand swamps, domes, sloughs, ponds);

(c) Hydric pine flatwoods (wet flatwoods);

(d) Mesic pine flatwoods; and

(e) High pine.

(5) Habitats that provide structural connectivity where needed to allow for dispersal, gene flow, and natural and adaptive movements, including those that may be necessitated by climate change. These connections may include linear corridors such as vegetated, riverine, or open-water habitat with opportunities for roosting and/or foraging, or patches (i.e., stepping stones) such as tree islands or other isolated natural areas within a matrix of otherwise low-quality habitat.

(6) A subtropical climate that provides tolerable conditions for the species such that normal behavior, successful reproduction, and rearing of offspring are possible.

### Special Management Considerations or Protection

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

of the Florida bonneted bat will require special management considerations or protection of the physical or biological features including passive (e.g., allowing natural processes to occur without intervention) and active (e.g., taking actions to restore and maintain habitat conditions or address threats) management. The features essential to the conservation of this species may require special management considerations or protection to reduce the threats that are related to inadvertent impacts from land management practices are discussed below. For discussion of special management considerations or protection required to reduce threats related to *Habitat Loss, Climate Change and Sea-level Rise, Environmental Stochasticity, and Pesticides and Contaminants*, see these sections in the proposed critical habitat rule (85 FR 35510, June 10, 2020).

#### *Inadvertent Impacts From Land Management Practices*

Forest management can help maintain and improve the Florida bonneted bat's roosting and foraging habitat (see *Use of Forests and Other Natural Areas* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61007–61010)), and a lack of forest management, including a lack of prescribed fire, can be detrimental to the species. Prescribed burns may benefit Florida bonneted bats by improving habitat structure, enhancing the prey base, and creating openings; restoration of fire to fire-dependent forests may improve foraging habitat for this species and create snags (Carter et al. 2002, p. 139; Boyles and Aubrey 2006, pp. 111–113; Lacki et al. 2009, entire; Armitage and Ober 2012, pp. 107–109; FWC 2013, pp. 9–11; Ober and McCleery 2014, pp. 1–3; Braun de Torrez et al. 2018a–b, entire).

Fire is a vital component in maintaining suitable Florida bonneted bat habitat (Braun de Torrez et al. 2018b, entire), and while many prescribed fire and other land management practices mimic natural processes and benefit native species on broad spatial and temporal scales, these activities can result in inadvertent negative impacts in the near term. For example, extensive removal of trees with cavities or hollows during activities associated with forest management, fuel reduction, vista management, off-road vehicle trail maintenance, prescribed fire, or habitat restoration may inadvertently remove roost sites or reduce the availability of roost sites (see *Land Management Practices* in the final listing rule (78 FR 61004, October 2, 2013, p. 61027)).

Cavity-roosting bats may be susceptible to fire effects (Carter et al. 2002, p. 140). Loss of active roosts or removal during critical life-history stages (e.g., when females are pregnant or rearing young) is of greatest concern, given the species' apparent small population size and low fecundity (Bailey et al. 2017b, p. 556; see also *Effects of Small Population Size, Isolation, and Other Factors* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61036–61037)). Risk from forest management may be minimized by conducting activities outside the bat's peak breeding season (April 15 to August 15), protecting known roost sites, or avoiding potential roost sites, as disturbance to roost sites at any time of the year may alter social dynamics and reproductive success (Blumstein 2010, pp. 665–666; Ober et al. 2017, p. 382). Special management considerations or protections to retain the essential physical or biological features for Florida bonneted bat include annual or seasonal monitoring efforts, or monitoring conducted prior to (but coordinated with) annual fire or forest management planning that can identify sensitive areas and incorporate appropriate avoidance or minimization measures. Developing additional avoidance or minimization measures for common management practices and activities (see the Florida Bonneted Bat Consultation Guidelines in Supporting Documents) on specific properties can also reduce negative effects. Retaining potential roost trees, wherever possible, may also reduce competition for tree cavities (see *Competition for Tree Cavities* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61034–61035)), and promote survival and the potential for population expansion over the long term.

The features essential to the conservation of the Florida bonneted bat may require special management considerations or protection to reduce threats and conserve these features. Actions that could ameliorate threats include, but are not limited to:

(1) Retaining and actively managing a habitat network of large and diverse conservation lands throughout the Florida bonneted bat's range;

(2) Protecting, restoring, or enhancing inland or higher elevation habitats that are predicted to be unaffected or less affected by sea-level rise;

(3) Protecting habitats that support high insect diversity and abundance, and avoiding the excessive use of pesticides wherever possible;

(4) Retaining potential roost trees and snags (see *Cover or Shelter*, above);

(5) Conducting annual or seasonal monitoring efforts, or monitoring conducted prior to (but coordinated with) annual fire or forest management planning; and

(6) Developing and implementing specific guidelines (see the Florida Bonneted Bat Consultation Guidelines in Supporting Documents) to minimize impacts of activities associated with hurricane clean-up, prescribed fire, invasive species management, forest management, and development.

#### *Special Management Previously Considered*

In the June 10, 2020, proposed rule to designate critical habitat for the Florida bonneted bat (85 FR 35510), we considered ecological light pollution to be a potential threat to the Florida bonneted bat and its habitat that would likely require special management. However, as we described in the final listing rule, the Florida bonneted bat's behavioral response to ecological light pollution has not been examined, and effects are not known (78 FR 61004, October 2, 2013, p. 61036). The species' fast-flight and long-range flight capabilities may make it more able to exploit insects congregated at artificial light sources and more susceptible to risks associated with such responses (e.g., increased predation or harm from humans). Alternatively, artificial lighting may not be influencing the species' foraging or other behaviors. Accordingly, at this time, there continues to be little information about the potential effects of light pollution on the Florida bonneted bat.

Therefore, upon further review of the best available information, we have removed ecological light pollution as a potential threat to the species that may require special management considerations or protection, but we specifically request comments on this matter.

#### **Conservation Strategy and Selection Criteria Used To Identify Critical Habitat**

##### *Conservation Strategy*

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation

as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. The occupied areas identified encompass the varying types and distribution of habitat needed by the species and provide sufficient habitat to allow for maintaining and potentially expanding the populations.

To determine and select appropriate occupied areas that contain the physical or biological features essential to the conservation of the species or areas otherwise essential for the conservation of the Florida bonneted bat, we incorporated information from the conservation strategy for the species. The goal of our conservation strategy for the Florida bonneted bat is to recover the species to the point where the protections of the Act are no longer necessary. The role of critical habitat in achieving this conservation goal is to identify the specific areas within the Florida bonneted bat's range that provide essential physical and biological features without which the Florida bonneted bat's rangewide resiliency, redundancy, and representation could not be achieved. Specifically, this conservation strategy helped identify those areas within the Florida bonneted bat's range that contain the physical and biological features without which rangewide resiliency, redundancy, and representation could not be achieved. Our conservation strategy identified goals, from which we developed the following six critical habitat criteria for determining the specific areas that contain the physical and biological features essential to the conservation of the species:

(1) Genetic diversity—To maintain viable populations in each of the known genetically differentiated areas (see *Space for Individual and Population Growth and for Normal Behavior*, above), critical habitat should include one unit within each of the four genetically differentiated populations.

(2) Geographic extent—To maintain viable populations that are distributed across the geographic range of the Florida bonneted bat (see *Current Distribution* in the final listing rule (78 FR 61004, October 2, 2013, pp. 61010–61011)), critical habitat units should represent the extent of the species' existing known range.

(3) Ecological diversity—To maintain at least one viable population in each major ecological community that provides roosting habitat for the Florida bonneted bat (see *Habitats with*

*Appropriate Disturbance Regimes*, above), these community types should be well represented in critical habitat units.

(4) Climate change resilience—To maintain at least one viable population in suitable habitat predicted to be unaffected or less affected by sea-level rise and climate change, critical habitat should include one unit in the northern, inland portion of the Florida bonneted bat's range.

(5) High conservation value (HCV) habitat—To maintain sufficient habitat with HCV that supports the life history of the species within each population, critical habitat units should incorporate multiple areas that support roosting and foraging needs and that have HCV (as informed by habitat analysis results and telemetry data).

(6) Structural connectivity—To maintain, enhance, and reestablish connectivity within and between Florida bonneted bat populations, critical habitat units should be configured within the central and south Florida landscape to provide connectivity based on the best available movement data for the species (see *Space for Individual and Population Growth and for Normal Behavior*, above).

#### *Selection Criteria and Methodology Used To Identify Critical Habitat*

To delineate the specific areas that are occupied by the species and that contain the physical and biological features essential to the Florida bonneted bat's conservation, we conducted a habitat analysis. Acknowledging some limitations in the information available, we used the best available data to conduct our habitat analysis (see Florida Bonneted Bat Habitat Analysis in Supporting Documents). Information used in the habitat analysis and/or the delineation of critical habitat units consists of the following:

(1) Confirmed presence data compiled in our Geographic Information System (GIS) database from 2003 through 2021, and provided by the Florida Fish and Wildlife Conservation Commission (FWC), University of Florida (UF), and other various sources, including survey reports, databases, and publications;

(2) Vegetation cover types from the Cooperative Land Cover map (CLC; version 3.4) developed by FWC and Florida Natural Areas Inventory;

(3) Canopy height from the global forest canopy height map (2019) developed by Global Land Analysis and Discovery;

(4) Red-cockaded woodpecker (*Picoides borealis*) potential habitat



(2016) developed by FWC, based on evidence indicating Florida bonneted bats use woodpecker cavities for roosting;

(5) Artificial sky luminance from the New World Atlas of Artificial Sky Brightness developed by the Light Pollution Science and Technology Institute (Falchi et al. 2016, entire);

(6) Fire frequency data provided by the Monitoring Trends in Burn Severity program;

(7) Urban development data (2010 baseline) from the Florida 2070 project developed by the Florida Department of Agriculture and Consumer Services, the UF GeoPlan Center, and 1000 Friends of Florida;

(8) Maps of unpublished telemetry data collected and provided by UF and FWC; and

(9) ArcGIS online basemap aerial imagery (2018–2020) to cross-check CLC data and ensure the presence of physical or biological features.

To help identify potential factors affecting Florida bonneted bat use, we conducted a spatial analysis to quantify relationships of habitat-related and other environmental variables with species occurrence (see the Florida Bonneted Bat Habitat Analysis in Supporting Documents)). Available presence data incorporated into the analysis primarily consisted of acoustic data, as well as locations of known roosts. Maps of telemetry locations were used to inform our evaluation of HCV areas but were not part of the habitat analysis dataset because coordinate data were not available at the time. We identified 10 covariates that related to habitat types (e.g., pine/cypress) and other factors (e.g., fire history) thought to influence habitat suitability and use by the Florida bonneted bat and modeled those at three spatial scales (see the Florida Bonneted Bat Habitat Analysis in Supporting Documents). Model output included predictive maps representing the probability of species occurrence based on the covariates included in the final models, and we used these maps to characterize the relative habitat suitability and conservation value of areas within central and south Florida. We also conducted sensitivity/specificity analyses to identify an objective threshold value for each model, which we then applied to identify areas with high conservation value to the species. See the Florida Bonneted Bat Habitat Analysis in Supporting Documents for full details of our methodology and results, including links to data sources used.

We considered the model output and the conservation strategy to determine

the specific areas occupied by the species on which are found the physical or biological features that are essential to the Florida bonneted bat. Those specific areas (critical habitat units) were identified and delineated using the following steps:

(1) We identified areas having high conservation value (as described above) for the Florida bonneted bat based on model output because those areas are likely to contain the combination of characteristics that we have determined are essential physical or biological features for the Florida bonneted bat.

(2) We refined these areas to eliminate any unsuitable or less suitable areas that are unlikely to contain features essential to the conservation of the species based on the Florida bonneted bat's biology (e.g., temperature requirements) and aerial imagery.

(3) We considered telemetry maps and certain critical habitat criteria that were not incorporated into the models (e.g., connectivity). Where telemetry maps indicated high use (e.g., HCV foraging habitat), or where additional area was needed to ensure sufficient connectivity, we delineated additional habitat using CLC data and aerial imagery and based on model output and covariate relationships identified in our habitat analysis.

(4) We evaluated the resulting units to determine whether occupied habitat is adequate to ensure conservation of the species. We specifically evaluated occupied units to ensure they fulfill all critical habitat criteria and meet the goals and objectives in our conservation strategy for identifying the areas that contain the features that are essential to the Florida bonneted bat. Based on our determination that occupied areas are sufficient for the conservation of the species, no unoccupied habitat is included in this revised proposed critical habitat designation.

When determining revised proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Florida bonneted bat. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action

involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (i.e., currently occupied), that contain one or more of the physical or biological features that are essential to support life-history processes of the species, and that may require special management considerations or protection. We considered areas occupied at the time of listing if they have documented presence of Florida bonneted bats from October 2013 through 2021. Due to the species' life span and high site fidelity, it is reasonable to conclude that these areas found to be occupied in 2013 to 2021 would have been inhabited by Florida bonneted bats when the species was listed in 2013. Each unit we propose to designate as critical habitat contains all the identified physical or biological features essential to the conservation of the species.

The revised proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <https://www.regulations.gov> at Docket No. FWS-R4-ES-2019-0106 and at the Florida Ecological Services Field Office website at <https://www.fws.gov/office/florida-ecological-services/library>.

#### Revised Proposed Critical Habitat Designation

We are proposing to designate nine units as critical habitat for the Florida bonneted bat. The critical habitat areas we describe below constitute our best assessment of areas that meet the definition of critical habitat for the Florida bonneted bat. The nine areas we propose as critical habitat are: (1) Kissimmee Unit, (2) Peace River Unit, (3) Babcock Unit, (4) Fisheating Creek Unit, (5) Corkscrew Unit, (6) Big Cypress Unit, (7) Everglades Tree Islands Unit, (8) Long Pine Key Unit, and (9) Miami-Dade Rocklands Unit. All nine units proposed as critical habitat are occupied by the species. Table 1 shows the revised proposed critical habitat units and the approximate area

of each unit/subunit within each land ownership category.

**TABLE 1—REVISED PROPOSED CRITICAL HABITAT UNITS AND SUBUNITS FOR THE FLORIDA BONNETED BAT, INCLUDING ACRES (ac) AND HECTARES (ha) BY LAND OWNERSHIP CATEGORY**

[Area estimates reflect all land within critical habitat unit boundaries, and land ownership was determined using the most recent parcel data provided by each county. All units are occupied]

Critical habitat unit/subunit	Land ownership: ac (ha)							Total area: ac (ha)
	Federal	Tribal	State	County	Local	Private/other	Unidentified	
1. Kissimmee .....	99 (40)	1 (<1)	135,779 (54,948)	815 (330)	0	36,996 (14,972)	2,047 (828)	175,737 (71,118)
1A .....	90 (36)	0	135,343 (54,771)	612 (248)	0	31,241 (12,643)	2,047 (828)	169,331 (68,526)
1B .....	9 (4)	1 (<1)	437 (177)	203 (82)	0	5,755 (2,329)	0	6,405 (2,592)
2. Peace River .....	32 (13)	0	6,389 (2,586)	563 (228)	165 (67)	19,047 (7,708)	1,850 (749)	28,046 (11,350)
2A .....	0	0	0	0	0	2,603 (1,053)	0	2,603 (1,053)
2B .....	0	0	0	0	0	5,478 (2,217)	200 (81)	5,678 (2,298)
2C .....	0	0	0	0	0	2,029 (821)	2 (1)	2,031 (822)
2D .....	32 (13)	0	6,389 (2,586)	563 (228)	165 (67)	8,938 (3,617)	1,648 (667)	17,734 (7,177)
3. Babcock .....	0	0	108,509 (43,912)	782 (316)	19 (8)	23,929 (9,684)	322 (130)	133,560 (54,050)
3A .....	0	0	80,043 (32,392)	782 (316)	19 (8)	7,392 (2,991)	322 (130)	88,559 (35,839)
3B .....	0	0	28,466 (11,520)	0	0	16,536 (6,692)	0	45,001 (18,211)
4. Fisheating Creek .....	0	0	7,689 (3,112)	<1	0	5,300 (2,145)	6 (2)	12,995 (5,259)
5. Corkscrew .....	0	0	26,226 (10,613)	5,265 (2,131)	13 (5)	17,319 (7,009)	41 (17)	48,865 (19,775)
6. Big Cypress .....	533,179 (215,770)	14,455 (5,850)	152,494 (61,712)	8,419 (3,407)	229 (93)	16,170 (6,544)	3,598 (1,456)	728,544 (294,831)
7. Everglades Tree Islands .....	16,538 (6,693)	0	1 (<1)	4 (2)	0	<1	60 (24)	16,604 (6,719)
8. Long Pine Key .....	25,142 (10,175)	0	2 (1)	0	0	187 (76)	5 (2)	25,337 (10,254)
9. Miami Rocklands .....	599 (242)	0	796 (322)	2,403 (972)	8 (3)	471 (190)	46 (19)	4,324 (1,750)
9A .....	0	0	0	52 (21)	0	<1	1 (<1)	53 (21)
9B .....	0	0	0	104 (42)	0	<1	1 (<1)	104 (42)
9C .....	0	0	0	5 (2)	0	<1	<1	5 (2)
9D .....	0	0	10 (4)	0	0	18 (7)	1 (<1)	28 (11)
9E .....	0	0	21 (8)	230 (93)	<1	13 (5)	2 (1)	267 (108)
9F .....	140 (57)	0	0	<1	0	<1	<1	140 (57)
9G .....	0	0	8 (3)	0	0	19 (8)	<1	28 (11)
9H .....	0	0	235 (95)	0	0	<1	3 (1)	238 (96)
9I .....	0	0	0	22 (9)	0	<1	<1	22 (9)
9J .....	0	0	60 (24)	<1	8 (3)	28 (11)	3 (1)	99 (40)
9K .....	0	0	36 (15)	<1	0	<1	<1	37 (15)
9L .....	0	0	77 (31)	<1	<1	<1	<1	77 (31)
9M .....	0	0	0	114 (46)	0	<1	<1	114 (46)
9N .....	0	0	18 (7)	0	0	<1	<1	18 (7)
9O .....	458 (185)	0	0	1,180 (478)	0	123 (50)	1 (<1)	1,762 (713)
9P .....	0	0	48 (19)	0	0	13 (5)	<1	61 (25)
9Q .....	0	0	<1	7 (3)	0	7 (3)	<1	14 (6)
9R .....	0	0	36 (15)	22 (9)	0	13 (5)	8 (3)	80 (32)
9S .....	0	0	34 (14)	63 (25)	0	35 (14)	2 (1)	135 (55)
9T .....	0	0	10 (4)	0	0	25 (10)	<1	36 (15)
9U .....	0	0	18 (7)	4 (2)	0	1 (<1)	<1	23 (9)
9V .....	0	0	0	0	0	30 (12)	1 (<1)	31 (13)
9W .....	0	0	9 (4)	103 (42)	0	<1	<1	112 (45)
9X .....	0	0	0	10 (4)	0	20 (8)	<1	30 (12)
9Y .....	0	0	0	18 (7)	0	11 (4)	4 (2)	32 (13)
9Z .....	0	0	0	28 (11)	0	<1	3 (1)	31 (13)
9AA .....	0	0	22 (9)	24 (10)	0	37 (15)	<1	84 (34)
9BB .....	0	0	0	19 (8)	0	23 (9)	1 (<1)	43 (17)
9CC .....	0	0	0	9 (4)	0	15 (6)	<1	24 (10)
9DD .....	0	0	19 (8)	0	0	<1	<1	19 (8)
9EE .....	0	0	12 (5)	<1	0	1 (<1)	5 (2)	18 (7)
9FF .....	0	0	0	39 (16)	0	<1	<1	39 (16)
9GG .....	0	0	81 (33)	240 (97)	0	28 (11)	1 (<1)	351 (142)
9HH .....	0	0	22 (9)	0	0	<1	<1	22 (9)
9II .....	0	0	18 (7)	5 (2)	0	10 (4)	6 (2)	39 (16)
9JJ .....	<1	0	0	105 (42)	0	<1	2 (1)	108 (44)
<b>Total .....</b>	<b>575,589 (232,933)</b>	<b>14,457 (5,851)</b>	<b>437,888 (177,207)</b>	<b>18,251 (7,386)</b>	<b>434 (176)</b>	<b>119,419 (48,327)</b>	<b>7,974 (3,227)</b>	<b>1,174,011 (475,105)</b>

Note: Area sizes may not sum due to rounding.

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

#### *Unit 1: Kissimmee Unit*

Unit 1 encompasses 175,737 ac (71,118 ha) of lands in Polk, Osceola, Highlands, and Okeechobee Counties, Florida. This unit consists of two subunits generally located along the eastern bank of Lake Kissimmee northeast to SR-192, north of SR-60; and along portions of the Kissimmee River, south of SR-60. Unit 1 predominately consists of State-owned conservation lands (135,779 ac (54,948 ha)) and private lands (36,996 ac (14,972 ha)). The largest conservation landholdings within this unit include Kissimmee Prairie Preserve State Park, Three Lakes WMA, Herky Huffman/Bull Creek WMA, Triple N Ranch WMA, and South Florida Water Management District lands along the Kissimmee River. Other smaller conservation lands also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 1 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. The Kissimmee Unit represents the northern extent of the species' range and provides resiliency against the expected impacts from habitat loss due to climate change as it includes areas considered less vulnerable to these effects. Habitat in this unit provides ecological diversity (*i.e.*, high pine and mesic flatwoods) and includes areas identified as having HCV, specifically high-quality roosting habitat (*e.g.*, potential roost trees, red-cockaded woodpecker activity in the area) and foraging habitat (*e.g.*, open water, abundant prey). In addition, the Florida bonneted bats in this area are genetically differentiated from those occurring elsewhere in the range (Austin et al. 2022, entire), and thus contribute to the genetic diversity of the overall population.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 1 may require special management considerations or protection due to the following threats: Habitat loss and fragmentation from changes in land use (*e.g.*, land clearing for residential/commercial development); lack of habitat management and/or inadvertent impacts from these habitat management practices (*e.g.*, prescribed fire, snag removal); and excessive pesticide use

(see Special Management Considerations or Protection, above).

Under section 4(a)(3)(B)(i) of the Act, we are exempting Avon Park Air Force Range lands (99,523 ac (40,276 ha)) from the critical habitat designation because the U.S. Air Force has an approved integrated natural resources management plan (INRMP) that provides benefits to the Florida bonneted bat and its habitat (see Exemptions, below, for more detailed information).

Approximately 1.25 ac (0.5 ha) of Tribal lands occur within Unit 1 (Miccosukee Tribe of Florida). We are considering exclusion of these lands from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts*, below).

#### *Unit 2: Peace River Unit*

Unit 2 encompasses 28,046 ac (11,350 ha) of lands in Hardee, DeSoto, and Charlotte Counties, Florida. This unit consists of four subunits located along portions of the Peace River and its tributaries (*e.g.*, Shell Creek, Charlie Creek), south of CR-64 with the majority west of U.S.-17. Unit 2 predominately consists of privately owned lands (19,047 ac (7,708 ha)) and State-owned conservation lands (6,389 ac (2,586 ha)). The largest conservation landholdings within this unit include the Peace River State Forest and the Deep Creek Preserve. Other smaller conservation lands also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 2 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. The Peace River Unit encompasses a known movement corridor (generally connecting proposed Units 1 and 3), allowing gene flow between these populations, and includes areas identified as having HCV, specifically high-quality foraging habitat along the Peace River and adjacent forested lands that provide open water and abundant prey. In addition, this unit adds ecological diversity (a natural river corridor) to the overall proposed designation.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 2 may require special management considerations or protection due to the following threats: Habitat loss, fragmentation, or degradation from changes in land use (*e.g.*, land clearing

for residential/commercial development); lack of habitat management and/or inadvertent impacts from land management practices (*e.g.*, prescribed fire, snag removal); excessive pesticide use; and climate change (*e.g.*, sea level rise/inundation, saltwater intrusion, habitat alteration/degradation) (see Special Management Considerations or Protection, above).

#### *Unit 3: Babcock Unit*

Unit 3 encompasses 133,560 ac (54,050 ha) of lands in Charlotte, Lee, and Glades Counties, Florida. This unit consists of two subunits, with the majority of Unit 3 located in Charlotte County, east of I-75; other portions are in northwestern Lee and western Glades Counties. This unit predominately consists of State-owned conservation lands (108,509 ac (43,912 ha)) and private lands (23,929 ac (9,684 ha)). The largest conservation landholdings within this unit are Babcock-Webb WMA and Babcock Ranch Preserve; other smaller conservation lands also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 3 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. Habitat in the Babcock Unit provides ecological diversity (*i.e.*, hydric and mesic flatwoods) and includes areas identified as having HCV, specifically superior roosting and foraging habitat. Babcock-Webb WMA and surrounding areas support the largest known population of Florida bonneted bats and the majority of all known roost sites. In addition, the Florida bonneted bats in this westernmost extent of the species' range are genetically differentiated from those occurring elsewhere in the range (Austin et al. 2022, entire), thus contributing to the genetic diversity of the overall population.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 3 may require special management considerations or protection due to the following threats: Habitat loss, fragmentation, or degradation from changes in land use (*e.g.*, land clearing for residential/commercial development); lack of habitat management and/or inadvertent impacts from land management practices (*e.g.*, prescribed fire, snag removal); excessive pesticide use; and climate change (*e.g.*, sea level rise/inundation, saltwater intrusion, habitat alteration/

degradation) (see Special Management Considerations or Protection, above).

#### Unit 4: Fisheating Creek Unit

Unit 4 encompasses 12,995 ac (5,259 ha) of lands in Glades and Highlands Counties, Florida. The majority of Unit 4 is located in Glades County, west of US-27; the remaining portion of the unit extends north into southern Highlands County. This unit predominately consists of State-owned conservation lands (7,689 ac (3,112 ha)) and private lands (5,300 ac (2,145 ha)). Conservation landholdings within this unit are Fisheating Creek WMA, Fisheating Creek/Lykes Brothers Conservation Easement, and Platt Branch Wildlife and Environmental Area.

Unit 4 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. High-quality foraging habitat along Fisheating Creek and adjacent forested lands provide open water and abundant prey. This unit serves as important foraging habitat connecting bats traveling between proposed Unit 3 and areas to the north and east, and, along with proposed Unit 2, this unit adds ecological diversity (natural river corridors) to the overall proposed designation.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 4 may require special management considerations or protection due to the following threats: Habitat loss, fragmentation, or degradation from changes in land use (e.g., land clearing for residential/commercial development); lack of habitat management and/or inadvertent impacts from land management practices (e.g., prescribed fire, snag removal, hydrologic restoration); excessive pesticide use; and climate change (e.g., sea level rise/inundation, saltwater intrusion, habitat alteration/degradation) (see Special Management Considerations or Protection, above).

#### Unit 5: Corkscrew Unit

Unit 5 encompasses 48,865 ac (19,775 ha) of lands in Lee and Collier Counties, Florida. This unit straddles the Lee/Collier county line, east of I-75, and predominately consists of State-owned conservation lands (26,226 ac (10,613 ha)) and private lands (17,319 ac (7,009 ha)). The largest conservation landholdings within this unit are Corkscrew Regional Ecosystem Watershed and the National Audubon

Society's Corkscrew Swamp Sanctuary; other smaller conservation lands also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 5 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. Habitat within the Corkscrew Unit provides ecological diversity (i.e., cypress and hydric flatwoods) and includes areas identified as having HCV. Corkscrew Swamp Sanctuary was established to protect one of the largest remaining stands of cypress in North America, and this area likely includes high-quality roosting habitat. The area also provides connectivity between Babcock-Webb WMA and areas south. The natural habitat within Unit 5 serves as important habitat in an area that is otherwise under high development pressure.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 5 may require special management considerations or protection due to the following: Habitat loss, fragmentation, or degradation from changes in land use (e.g., land clearing for residential/commercial development); lack of habitat management and/or inadvertent impacts from land management practices (e.g., prescribed fire, snag removal); and climate change (e.g., sea level rise/inundation, saltwater intrusion, habitat alteration/degradation) (see Special Management Considerations or Protection, above).

#### Unit 6: Big Cypress Unit

Unit 6 encompasses 728,544 ac (294,831 ha) of lands in Collier, Hendry, and Monroe Counties, Florida. The majority of Unit 6 is located in Collier County, south of I-75; the remainder occurs in southern Hendry County and mainland portions of Monroe County. This unit predominately consists of Federal (533,179 ac (215,770 ha)) and State-owned (152,494 ac (61,712 ha)) conservation lands. The largest landholdings within this unit are Big Cypress National Preserve, Florida Panther National Wildlife Refuge (NWR), Fakahatchee Strand Preserve State Park, and Picayune Strand State Forest; other smaller conservation lands also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 6 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on

documented presence of Florida bonneted bats within the unit. Habitat in the Big Cypress Unit, along with Unit 5, provides ecological diversity (i.e., cypress and hydric flatwoods) and includes areas identified as having HCV. Roosting habitat within this unit is of particularly high quality. Despite challenges in accessing this site to conduct surveys, the Florida bonneted bat has been documented throughout this unit, including the discovery of 25 natural roosts (the most of any unit). The Florida bonneted bats in this area are genetically differentiated from those occurring elsewhere in the range (Austin et al. 2022, entire) and thus contribute to the genetic diversity of the overall population.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 6 may require special management considerations or protection due to the following threats: Habitat loss, fragmentation, or degradation from changes in land use (e.g., land clearing for residential, commercial, transportation, or energy-related development); lack of habitat management and/or inadvertent impacts from land management practices (e.g., prescribed fire, snag removal, habitat and hydrologic restoration); excessive pesticide use; and climate change (e.g., sea level rise/inundation, saltwater intrusion, habitat alteration/degradation, coastal squeeze) (see Special Management Considerations or Protection, above).

Approximately 14,455 ac (5,850 ha) of Tribal lands occur within Unit 6 (Seminole Tribe of Florida). We are considering exclusion of these lands from the final critical habitat designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts*, below).

#### Unit 7: Everglades Tree Islands Unit

Unit 7 encompasses 16,604 ac (6,719 ha) of lands in Miami-Dade County, Florida, south of Tamiami Trail and west of Krome Avenue. Nearly this entire unit is Federal land within Everglades National Park (ENP; 16,538 ac (6,693 ha)).

Unit 7 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. The Everglades Tree Islands Unit provides connectivity between Unit 6 and the southeast coast (proposed Units 8 and 9), allowing gene flow between these populations. It also includes areas identified as having HCV. Despite

limited effort and challenges accessing the area to conduct surveys, the Florida bonneted bat has been documented throughout this unit.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 7 may require special management considerations or protection due to the following threats: Lack of habitat management and/or inadvertent impacts from land management practices (*e.g.*, prescribed fire, snag removal, habitat and hydrologic restoration) and climate change (*e.g.*, sea level rise/inundation, saltwater intrusion, habitat alteration/degradation) (see Special Management Considerations or Protection, above).

#### *Unit 8: Long Pine Key Unit*

Unit 8 encompasses 25,337 ac (10,254 ha) of lands in Miami-Dade County, Florida, along ENP's Main Park Road (SR-9336) between Mahogany Hammock and SW 237th Avenue. Nearly this entire unit is Federal land within ENP (25,142 ac (10,175 ha)).

Unit 8 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. Habitat in the unit provides ecological diversity (*i.e.*, pine rocklands) and includes areas identified as having HCV, specifically high-quality roosting and foraging habitat within Long Pine Key, the largest remaining contiguous occurrence of pine rockland habitat. This unit includes the southernmost extent of the species' range and provides additional connectivity between proposed Units 6 and 9.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 8 may require special management considerations or protection due to the following: Lack of habitat management and/or inadvertent impacts from land management practices (*e.g.*, prescribed fire, snag removal) and climate change (*e.g.*, sea level rise/inundation, saltwater intrusion, habitat alteration/degradation) (see Special Management Considerations or Protection, above).

#### *Unit 9: Miami Rocklands Unit*

Unit 9 encompasses 4,324 ac (1,750 ha) of lands in Miami-Dade County, Florida. This unit consists of 36 subunits located between Tamiami Trail to the north and SR-9336 to the south, and is surrounded by a dense urban matrix typical of the Miami metropolitan area. This unit predominately consists of conservation lands owned by county (2,403 ac (972

ha)), State (796 ac (322 ha)), and Federal (599 ac (242 ha)) agencies. The largest landholdings within this unit are Zoo Miami, Larry and Penny Thompson Park, the U.S. Coast Guard Communication Station, Navy Wells, and the Deering Estate. Many county-owned preserves and parks, as well as other smaller conservation lands, also occur within this unit (for more information, see the Conservation Lands document in Supporting Documents).

Unit 9 contains all of the essential physical or biological features for the Florida bonneted bat and is considered occupied at the time of listing based on documented presence of Florida bonneted bats within the unit. The Miami Rocklands Unit represents the easternmost extent of the species' range. Habitat in this unit provides ecological diversity (*i.e.*, pine rocklands) and includes areas identified as having HCV. This unit includes remaining fragments of pine rockland and rockland hammock habitat within an urbanized landscape. These fragments of natural habitat are used extensively by Florida bonneted bats and provide connectivity within the unit. Florida bonneted bats inhabiting the area are the most genetically differentiated from those occurring elsewhere in the range (Austin et al. 2022, entire), and thus contribute to the genetic diversity of the overall population.

The physical or biological features essential to the conservation of the Florida bonneted bat in Unit 9 may require special management considerations or protection due to the following: Habitat loss, fragmentation, or degradation from changes in land use (*e.g.*, land clearing for residential, commercial, transportation, or energy-related development); lack of habitat management and/or inadvertent impacts from land management practices (*e.g.*, prescribed burns, snag removal, habitat restoration); excessive pesticide use; and climate change (*e.g.*, sea level rise/inundation, saltwater intrusion, habitat alteration/degradation, coastal squeeze) (see Special Management Considerations or Protection, above).

Under section 4(a)(3)(B)(i) of the Act, we are exempting Homestead Air Reserve Base (Base) lands (280 ac (113 ha)) from critical habitat designation because the U.S. Air Force has an approved INRMP that provides benefits to the Florida bonneted bat and its habitat (see Exemptions, below, for more detailed information).

Approximately 104 ac (42 ha) of private lands under a habitat conservation plan (HCP) occur within Unit 9. We are considering exclusion of these lands from the final critical habitat

designation under section 4(b)(2) of the Act (see *Consideration of Other Relevant Impacts*, below).

### **Effects of Critical Habitat Designation**

#### *Section 7 Consultation*

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

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

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

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinstate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law) and, if subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. In such situations, Federal agencies sometimes may need to request reinstatement of consultation with us, but the regulations also specify some exceptions to the requirement to reinstate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

#### *Application of the “Destruction or Adverse Modification” Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species. Factors considered in making these determinations may include the extent of the proposed action, including its temporal and spatial scale relative to the critical habitat unit or subunit within which it occurs; the specific purpose for which that unit or subunit was identified and designated as critical habitat; and the impact of the proposed action on the unit or subunit’s likelihood of serving its intended conservation function or purpose.

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 violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter roosting or foraging habitat or habitat connectivity such that they appreciably diminish the value of critical habitat as a whole. Such activities may include, but are not limited to: Land clearing for residential, commercial, transportation, energy-related or other development; and water diversion, drainage, or wetland loss or conversion. These activities could destroy Florida bonneted bat roosting and foraging sites (necessary for food, shelter, protection from predation, and reproduction); reduce habitat conditions below what is necessary for survival and growth; and/or eliminate or reduce the habitat necessary for successful reproduction, dispersal, and population expansion (see Physical or Biological Features Essential to the Conservation of the Species, above).

(2) Actions that would significantly alter vegetation structure or composition such that they appreciably diminish the value of critical habitat as a whole. Such

activities could include, but are not limited to: Habitat management or restoration (e.g., prescribed burning and other forest management activities, snag removal, or hydrologic restoration) conducted in a manner that does not minimize disturbance to the physical and biological features. These activities could affect habitat that provides for the Florida bonneted bat’s roosting and rearing, foraging and prey, refuge from short-term changes to habitat, and/or protection from predation (see Physical or Biological Features Essential to the Conservation of the Species, above).

(3) Actions that would significantly reduce suitability of habitat or impact prey base (e.g., availability, abundance, density, diversity) such that they appreciably diminish the value of critical habitat as a whole. These actions include, but are not limited to:

Hydrologic alteration or excessive pesticide applications that impact prey or alter foraging behavior or movement. These activities could significantly modify habitat that currently provides adequate prey and space for foraging (see Physical or Biological Features Essential to the Conservation of the Species, above).

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to adversely affect critical habitat but not likely to destroy or adversely modify critical habitat include actions that significantly affect the unit or subunit’s ability to fulfill its primary functions (e.g., connectivity, foraging or roosting habitat, genetic representation), but do not appreciably diminish the value of critical habitat as a whole. Such activities may include a landscape-scale hydrologic restoration project that would convert large amounts of roosting habitat to foraging habitat within a unit; development that would eliminate a small amount of high-value foraging area or affect a known corridor; or habitat or invasive species management programs that are overall beneficial to Florida bonneted bat habitat but may result in inadvertent, but significant, impacts to roosting habitat.

As noted above, some actions that are beneficial to Florida bonneted bat habitat, including actions necessary to maintain habitat quality and suitability, may result in inadvertent negative effects. When conducted with guidance from the Service or using established best management practices (BMPs) that prevent or minimize impacts, these actions are beneficial and are encouraged as a part of standard land management practices. Avoidance and minimization measures can also reduce the impacts of habitat loss and other

impacts from development projects, habitat alteration, and habitat conversion. General guidance has already been developed and is in use (see Florida Bonneted Bat Consultation Guidelines, Appendices D and E and Florida Bonneted Bat Avoidance and Minimization Measures in Supporting Documents); additional guidance is under development to address habitat management practices on conservation lands.

Some activities that the Service may consider to be activities that may affect, but are unlikely to adversely affect, critical habitat include actions that are wholly beneficial (*i.e.*, those that maintain, improve, or restore the functionality of critical habitat for the Florida bonneted bat without causing adverse effects to the essential physical or biological features), discountable (*i.e.*, unlikely to occur), or insignificant. In such cases, the Act's section 7 consultation requirements can be satisfied through the informal concurrence process.

Whether an action will have insignificant effects must be considered within the context of the unit or subunit in which the action occurs. A localized reduction in roosting or foraging habitat within a stand may have such a small impact on physical and biological features within the stand that a "not likely to adversely affect" determination is appropriate. Similarly, effects to roosting habitat may be negligible where a hazard tree removal project occurs in a stand with many suitable roosting trees.

## 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 INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

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

Among other things, each INRMP must, to the extent appropriate and

applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that 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 INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for the Florida bonneted bat to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense (DoD) lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

### *Approved INRMPs*

For discussion of the approved INRMP for Avon Park Air Force Range (Unit 1: Kissimmee Unit; 99,523 ac (40,276 ha)), see the Exemptions section in the proposed critical habitat rule (85 FR 35510, June 10, 2020).

Homestead Air Reserve Base (Unit 9: Miami Rocklands Unit—Subunits KK, LL), 280 ac (113 ha)

The Homestead Air Reserve Base (Base) has a current and completed INRMP, signed by the Service and the FWC in 2017 and 2018, respectively. The INRMP (U.S. Air Force Reserve Command (Air Force) 2016) provides conservation measures for the species and management of important upland and wetland habitats on the base.

The Base's INRMP provides benefits to Florida bonneted bat habitat as the primary goals of the plan include, "conservation and enhancement of the land and water resources of the Base and improving and maintaining the quality of native vegetation communities and threatened and endangered species' habitats, while supporting the military mission" (Air

Force 2016, p. 75). Some objectives identified under this goal that should benefit the Florida bonneted bat include: (1) Protecting, enhancing, and maintaining natural communities to support native fish and wildlife species; (2) conserving and protecting the habitats for federally and State-listed species; (3) reducing and controlling populations of invasive and exotic plant species; and (4) instituting control for nuisance and exotic wildlife.

More specifically, protecting and maintaining wetland functions, restoring pine rockland, controlling invasive species, managing water quality, and maintaining and enhancing natural habitat values and ecosystem functions are expected to benefit the species and its habitat. The Base's INRMP also includes specific projects to benefit the species including incorporation of Florida bonneted bat management strategies into conservation programs on the Base, working with the Service to identify and implement management strategies for foraging and roosting habitat, and conducting a qualitative bat survey (Air Force 2016, pp. A–3, A–4). The study is expected to provide information on the bat species present and their habitat use on the Base. Data from the study will be used to supplement and update existing natural resource management plans on the Base. Other components of the Base's INRMP, such as the Integrated Pest Management Plan, the Bird/Wildlife Aircraft Strike Hazard Plan, the threatened and endangered species training course, and implementation of the pine rockland restoration and management plan, have the potential to reduce pesticide use and exposure to bats, avoid aircraft strikes to bats, raise awareness about bats using the base, and enhance habitat quality for bats and other species (Air Force 2016, appendix A).

In addition, the Base's INRMP includes a management plan for the Florida bonneted bat that addresses: Conservation of wetlands to promote foraging opportunities; promotion of insect diversity and availability through the appropriate application of insecticides, mowing, and other maintenance practices; and protection of roosting habitat as identified through monitoring (Air Force 2016, appendix G). Per the management plan, guidelines outlined in the Base's INRMP, Pest Management Plan, Landscape Maintenance Plan, and the Protected Plant Management Plan will be closely monitored and adapted as life-history data for the Florida bonneted bat become available. The INRMP also includes proposed monitoring

consisting of acoustic surveys and more intensive surveys for roost sites; the Base will seek funding and partnership opportunities to accomplish roost site monitoring and will adapt the management plan to incorporate more specific protection and avoidance measures for the bat at identified roost sites on the installation (Air Force 2016, appendix G). When compatible with mission requirements, the Base will also promote the use of environmentally friendly lighting practices to minimize impacts to the bat (Air Force 2016, appendix G). The full suite of protective measures incorporated in the Base’s INRMP is expected to benefit the species and its habitat.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to Avon Park Air Force Range’s and the Base’s INRMPs and that conservation efforts identified in the INRMPs will provide a benefit to the Florida bonneted bat. Therefore, lands within these installations are exempt from critical habitat designation under section 4(a)(3) of the Act. Accordingly, we are not including approximately 99,803 ac (40,389 ha) of habitat in this proposed critical habitat designation because of these exemptions.

**Consideration of Impacts Under Section 4(b)(2) of the Act**

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

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

benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. We describe below our process for considering each category of impacts and our analyses of the relevant impacts.

*Exclusion Requests Received During the Previous Public Comment Period*

During the public comment period for the June 10, 2020, proposed critical habitat designation (85 FR 35510), we received nine requests for exclusion from critical habitat designation. Of these, two requests do not overlap with this revised proposed designation, while the remaining seven requests overlap to some degree (see table 2, below). Additionally, requests for exclusion of federal lands are not included in table 2, given the high standard set in our 2016 policy regarding exclusions of Federal lands under 4(b)(2) of the Act (2016 Policy). As part of our final rule, we may evaluate the areas in Table 2 for possible exclusion from the final critical habitat designation. All requests received as public comments are available for review at <https://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0106.

**TABLE 2—EXCLUSION REQUESTS RECEIVED DURING THE 2020 PUBLIC COMMENT PERIOD ON THE PROPOSED CRITICAL HABITAT DESIGNATION FOR THE FLORIDA BONNETED BAT AND CORRESPONDING OVERLAP WITH REVISED PROPOSED CRITICAL HABITAT UNITS IN THIS RULE**

Requesting party (Public comment No. on <a href="https://www.regulations.gov">https://www.regulations.gov</a> )	Area requested for exclusion	Basis for exclusion per requesting party	Overlap with revised proposed critical habitat	
			Unit/subunit	Acres
Aliese Priddy, JB Ranch I, LLC (FWS-R4-ES-2019-0106-0464 and attachment).	Property owned by JB Ranch I, LLC, and Sunniland Family Limited Partnership.	Economic, No ecological benefit.	No overlap .....	N/A.
Miami-Dade Limestone Products Association (FWS-R4-ES-2019-0106-0386 and attachment).	Lands overlapping the Florida legislature-designated Lake Belt mining area.	No ecological benefit.	No overlap .....	N/A.
Florida Power & Light (FPL) (FWS-R4-ES-2019-0106-0449 and attachment).	All FPL electric utility sub-stations <sup>1</sup> and rights-of-way containing aboveground linear facilities.	Conservation plans or programs, Economic.	All .....	Insufficient information to determine or estimate.
Micosukee Tribe of Florida (Comment submitted directly to the Service).	Tribal reservation lands and fee lands ..	Tribal lands, Conservation plans or programs.	1 .....	1.25.
U.S. Army Corps of Engineers (Comment submitted directly to the Service).	Lands enrolled in the Wetland Reserve Easement Partnership Program (formerly called Wetland Reserve Program).	Economic .....	2A .....	387.
	Lands within the Picayune Strand Restoration Project.	Economic .....	6 .....	64,490.
Seminole Tribe of Florida (FWS-R4-ES-2019-0106-0380 and attachment).	Tribal reservation lands and fee lands ..	Tribal lands, Conservation plans or programs.	6 .....	14,455.
Collier Enterprises Management, Inc. (FWS-R4-ES-2019-0106-0461 and attachment).	Lands within the boundary of the draft East Collier Multiple Species Habitat Conservation Plan.	Conservation plans or programs.	5 .....	Included <sup>2</sup> : 2,013. Eligible <sup>3</sup> : 163.



TABLE 2—EXCLUSION REQUESTS RECEIVED DURING THE 2020 PUBLIC COMMENT PERIOD ON THE PROPOSED CRITICAL HABITAT DESIGNATION FOR THE FLORIDA BONNETED BAT AND CORRESPONDING OVERLAP WITH REVISED PROPOSED CRITICAL HABITAT UNITS IN THIS RULE—Continued

Requesting party (Public comment No. on <a href="https://www.regulations.gov">https://www.regulations.gov</a> )	Area requested for exclusion	Basis for exclusion per requesting party	Overlap with revised proposed critical habitat	
			Unit/subunit	Acres
Collier Mosquito Control District (MCD) (FWS–R4–ES–2019–0106–0385 and attachment).	Lands within the existing and proposed Collier MCD boundaries.	Economic .....	6 .....	Included <sup>2</sup> : 1,561.
			5 .....	Eligible <sup>3</sup> : 35.
			6 .....	Existing MCD: 317. Proposed MCD: 3,118. Existing MCD: 166. Proposed MCD: 78,568.

<sup>1</sup> As developed areas, electric utility substations were excluded by text in the June 10, 2020, proposed critical habitat rule (85 FR 35510), and remain excluded by text in this revised proposed rule.

<sup>2</sup> “Included” lands are areas covered by draft HCP; certain impacts/development actions are allowed.

<sup>3</sup> “Eligible” lands are not included in draft HCP but are eligible to join without amending the HCP.

*Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. For information on how probable economic impacts of a designation were assessed, please see the *Exclusions Based on Economic Impacts* section in the proposed critical habitat rule (85 FR 35510, June 10, 2020). For this particular revised proposed designation, we revised the incremental effects memorandum (IEM) to consider the probable incremental economic impacts that may result from this designation of critical habitat. The information contained in our revised IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Florida bonneted bat. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the revised proposed critical habitat designation for the Florida bonneted bat; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are

likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from this revised proposed designation of critical habitat for the Florida bonneted bat, first we identified, in the revised IEM dated June 22, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Commercial or residential development; (2) transportation; (3) utilities; (4) energy (including solar, wind, and oil and gas); (5) water management (including water supply, flood control, and water quality); (6) recreation; (7) land management (including prescribed burning and invasive species control); and (8) habitat and hydrologic restoration. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Because the Florida bonneted bat is already listed under the Act, in areas where the species is present, Federal agencies are currently required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this revised proposed critical habitat designation, our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that result from the species being listed and

those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Florida bonneted bat’s critical habitat. The following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm to constitute jeopardy to the Florida bonneted bat would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this revised proposed designation of critical habitat.

The revised proposed critical habitat designation for the Florida bonneted bat consists of nine units, all occupied by the species, totaling 1,174,011 ac (475,105 ha) and including lands under Federal, Tribal, State, county, local, and private jurisdictions (see table 1, above). Because all areas are occupied, the economic impacts of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification. This finding is based on the following factors:

- Any activities with a Federal nexus occurring within occupied habitat will be subject to section 7 consultation requirements regardless of critical habitat designation, due to the presence of the listed species; and

- In most cases, project modifications requested to avoid adverse modification are likely to be the same as those needed to avoid jeopardy in occupied habitat.

Our analysis considers the potential need to consult on development, transportation, utilities, land management, habitat restoration, and other activities authorized, undertaken, or funded by Federal agencies within critical habitat. The total incremental section 7 costs associated with the designation of the proposed units are estimated to be less than \$70,800 per year, with the highest costs expected in Unit 6 (IEc 2021, pp. 2, 25). While the revised proposed critical habitat area is relatively large, incremental section 7 costs are kept comparatively low due to the strong baseline protections that already exist for this species due to its listed status, the existence of a consultation area map that alerts managing agencies about the location of the species and its habitat, and the presence of other listed species in the area.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this revised proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

#### *Consideration of National Security Impacts*

For information on how probable impacts to national security were assessed, please see the Impacts on National Security and Homeland Security section in the proposed critical habitat rule (85 FR 35510, June 10, 2020). We have evaluated whether any of the lands within this revised proposed designation of critical habitat are owned by DoD or DHS or could lead to national-security or homeland-security impacts if designated. In this discussion, we describe the areas within the revised proposed designation that are owned by DoD or DHS or for which designation could lead to national-security or homeland-security impacts. For each area, we describe the available information indicating whether we have reason to consider excluding the area from the designation. If, during the comment period, we identify or receive credible information about additional areas for which designation may result in incremental national-security or homeland-security impacts, then we will also conduct a discretionary exclusion analysis to determine whether to exclude those additional areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 17.90.

#### *Department of Homeland Security*

We have determined that some lands within Unit 9, Subunit O, of the revised proposed critical habitat designation for the Florida bonneted bat are owned, managed, or used by the U.S. Coast Guard (USCG), which is part of the DHS.

The USCG property is separated into two main areas: the Communications Station Miami and the Civil Engineering Unit (CEU). The Communications Station houses transmitting and receiving antennas. The CEU plans and executes projects at regional shore facilities, such as construction and post-disaster assessments.

The USCG parcel contains approximately 100 ac (40 ha) of standing pine rocklands. The remainder of the site, outside of the developed areas, is made up of scraped pine rocklands that are mowed three to four times per year for maintenance of a communications antenna field. Although disturbed, this scraped area maintains sand substrate and many native pine rockland species; the Florida bonneted bat has also been documented on adjacent property. The USCG parcel has a 2017 Natural Resources Management Plan (Gottfried 2017, entire) that includes habitat

management and restoration recommendations for their Pineland Natural Area, a 72-ac (29-ha) conservation area within this property. Recommended management includes prescribed fire, control of invasive plants, and protection of lands from further development or degradation. In addition, the standing pine rockland area is partially managed through an active recovery grant to the Institute for Regional Conservation. Under this grant, up to 39 ac (16 ha) of standing pine rocklands will undergo invasive vegetation control.

Based on a review of the specific mission of the USCG facility in conjunction with the measures and efforts set forth in the management plan to preserve pine rockland habitat and protect sensitive and listed species, we have determined that it is unlikely that the critical habitat, if finalized as proposed in this document, would negatively impact the facility or its operations. As a result, we do not anticipate any impact on national security. Consequently, the Secretary does not intend to exercise her discretion to exclude any of these areas from the final designation based on impacts on national security. We will, however, review this determination, in light of any new information and public comments we receive prior to making a decision in the final rule.

#### *Department of Defense*

We have determined that the U.S. Army Corps of Engineers, a branch of the DoD, retains ownership over a 14-ac (6-ha)-parcel within Unit 9, Subunit O, of the revised proposed critical habitat designation for the Florida bonneted bat. This area is a combination of standing and scraped pine rocklands but is not managed for preservation of natural resources. The U.S. Army Corps of Engineers does not have any specific management plan for the Florida bonneted bat or its habitat covering these lands. Activities conducted on this site are unknown, but we do not anticipate any impact on national security. Consequently, the Secretary does not intend to exercise her discretion to exclude any of these areas from the final designation based on impacts on national security. We will, however, review this determination, in light of any new information and public comments we receive, prior to making a decision in the final rule.

#### *Consideration of Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and

impacts on national security discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements (SHAs), or candidate conservation agreements with assurances (CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

When analyzing other relevant impacts of including a particular area in a designation of critical habitat, we weigh those impacts relative to the conservation value of the particular area. To determine the conservation value of designating a particular area, we consider a number of factors, including, but not limited to, the additional regulatory benefits that the area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus, the educational benefits of mapping essential habitat for recovery of the listed species, and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of the Florida bonneted bat, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection and, where a Federal nexus exists, increased habitat protection for Florida bonneted bat due to protection from destruction or adverse modification of critical habitat. Continued implementation of an ongoing management plan that provides conservation equal to or more than the protections that result from a critical habitat designation would reduce those benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the

benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

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

#### Private or Other Non-Federal Conservation Plans Related to Permits Under Section 10 of the Act

HCPs for incidental take permits under section 10(a)(1)(B) of the Act provide for partnerships with non-Federal entities to minimize and mitigate impacts to listed species and their habitat. In some cases, HCP permittees agree to do more for the conservation of the species and their habitats on private lands than designation of critical habitat would provide alone. We place great value on the partnerships that are developed during the preparation and implementation of HCPs.

CCAAs and SHAs are voluntary agreements designed to conserve candidate and listed species, respectively, on non-Federal lands. In exchange for actions that contribute to the conservation of species on non-Federal lands, participating property owners are covered by an “enhancement of survival” permit under section 10(a)(1)(A) of the Act, which authorizes incidental take of the covered species that may result from implementation of conservation actions or specific land uses. In the case of SHAs, the permit would allow participants to take listed species or modify habitat to return population levels and habitat conditions to those agreed upon as baseline condition under the agreements. The Service also provides enrollees assurances that we will not impose

further land-, water-, or resource-use restrictions, or require additional commitments of land, water, or finances, beyond those agreed to in the agreements.

When we undertake a discretionary section 4(b)(2) exclusion analysis based on permitted conservation plans such as CCAAs, SHAs, and HCPs, we consider the following three factors:

- (i) Whether the permittee is properly implementing the conservation plan or agreement;
- (ii) Whether the species for which critical habitat is being designated is a covered species in the conservation plan or agreement; and
- (iii) Whether the conservation plan or agreement specifically addresses the habitat of the species for which critical habitat is being designated and meets the conservation needs of the species in the planning area.

The revised proposed critical habitat designation includes areas that are covered by the Coral Reef Commons HCP, a permitted plan providing for the conservation of the Florida bonneted bat.

#### Coral Reef Commons HCP

The revised proposed designation includes the Coral Reef Commons mixed-use community, which consists of 900 apartments, retail stores, restaurants, and parking. In 2017, an HCP and associated permit under section 10 of the Act was developed and issued for the Coral Reef Commons development (Church Environmental 2017, entire). As part of the HCP and permit, an approximately 52-ac (21-ha) on-site preserve was established under a conservation encumbrance that will be managed in perpetuity for pine rockland habitat and sensitive and listed species, including the Florida bonneted bat. Also, an additional approximately 52-ac (21-ha) off-site mitigation area was set aside for Coral Reef Commons. Both the on-site preserves and the off-site mitigation area will be managed to maintain healthy pine rockland habitat through the use of invasive, exotic plant management, mechanical treatment, and prescribed fire. Since initiating the Coral Reef Commons HCP, pine rockland restoration efforts have been conducted within all the management units in the on-site preserve and the off-site mitigation area. A second round of prescribed fire began in February 2021. Currently, the on-site preserve meets or exceeds the success criteria described in the HCP.

Maintenance of pine rockland habitat specifically relates to conservation of ecological diversity described in physical or biological feature 4, and

other biological objectives of the HCP (e.g., implementation of a burn plan, minimizing pesticide use to the extent practicable) may provide conservation benefits related to physical or biological features 1, 2, and 3.

After considering the factors described above, we have identified the 104 ac (42 ha) under the Coral Reef Commons HCP (in Unit 9, Subunit O) as an area we have reason to consider excluding because of its permitted plan. Specifically, our reasons for considering this area for potential exclusion are not only that the Florida bonneted bat is a covered species within the HCP; but also that the HCP specifically addresses conservation of pine rockland habitat, generally addresses four of the physical or biological features essential for the conservation of the species, and may meet the conservation needs of the species within the area covered by the HCP. We will more thoroughly review the HCP, its implementation of the conservation measures for the Florida bonneted bat and its habitat therein, and public comment on this issue prior to finalizing critical habitat, and if appropriate, exclude from critical habitat for the Florida bonneted bat those lands associated with the Coral Reef Commons HCP that are in the preserve and offsite mitigation area.

**Tribal Lands**

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

A joint Secretarial Order that applies to both the Service and the National Marine Fisheries Service (NMFS)—Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206)—is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, the appendix to S.O. 3206 explicitly recognizes the right of Tribes to participate fully in any listing process that may affect Tribal rights or Tribal trust resources; this includes the designation of critical habitat. Section 3(b)(4) of the appendix requires the

Service to consult with affected Tribes “when considering the designation of critical habitat in an area that may impact Tribal trust resources, Tribally-owned fee lands, or the exercise of Tribal rights.” That provision also instructs the Service to avoid including Tribal lands within a critical habitat designation unless the area is essential to conserve a listed species, and it requires the Service to “evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands.”

Our implementing regulations at 50 CFR 17.90(d)(1)(i) are consistent with S.O. 3206. When we undertake a discretionary exclusion analysis, in accordance with S.O. 3206 we consult with any Tribe whose Tribal trust resources, Tribally owned fee lands, or Tribal rights may be affected by including any particular areas in the designation, and we evaluate the extent to which the conservation needs of the species can be achieved by limiting the designation to other areas. We then weighed nonbiological impacts to Tribal lands and resources consistent with the information provided by the Tribes.

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

The revised proposed critical habitat designation includes the following Tribal lands or resources:

*Seminole Tribe of Florida:* The revised proposed designation includes an area (14,455 ac (5,850 ha)) within Unit 6 (Big Cypress) that overlaps with Seminole Tribe of Florida Trust lands. The Seminole Tribe Wildlife Conservation Plan, Fire Management Plan, and Forest Management Plan cover these lands for the protection of listed and endangered species, including the Florida bonneted bat. The Service reviewed these plans and issued a biological opinion on December 19, 2014, which we amended on June 9,

2017 (see Supporting Documents). The Wildlife Conservation Plan includes conservation measures in place that support the Florida bonneted bat and its habitat (e.g., limit impacts to potential roost trees during prescribed burns and home site/access road construction, maintain bonneted bat habitat through prescribed burning and construction of bat houses). The conservation measures specifically address conservation of roosting and foraging habitat (i.e., physical or biological features 1 through 4), and maintenance of that habitat through active management; therefore, the measures appear to meet the conservation needs of the Florida bonneted bat within the area covered by the plan. As such, we are considering 14,455 ac (5,850 ha) of Seminole Tribe of Florida Trust lands within Unit 6 (Big Cypress) for exclusion.

*Micosukee Tribe of Florida:* The revised proposed designation includes an area (1.25 ac (0.5 ha)) within Unit 1 (Kissimmee) that overlaps with Micosukee Tribe of Florida fee lands. At present, we do not have any information on how this small parcel is managed, but we are considering 1.25 ac (0.5 ha) of Micosukee Tribe of Florida fee lands within Unit 1 (Kissimmee) for exclusion.

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

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the revised proposed critical habitat units are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise her discretion to exclude the lands from the final designation.

Table 3, below, provides approximate areas of lands that meet the definition of critical habitat but for which we are considering possible exclusion under section 4(b)(2) of the Act from the final critical habitat designation for the Florida bonneted bat. In addition, we may consider previously requested exclusion requests received during the public comment period on the June 10, 2020, proposed rule that overlap with revised proposed critical habitat (see table 2, above).

TABLE 3—AREAS CONSIDERED FOR EXCLUSION WITHIN REVISED PROPOSED CRITICAL HABITAT UNITS IN ACCORDANCE WITH THE 2016 POLICY

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas considered for possible exclusion, in acres (hectares)	Rationale for proposed exclusion
Unit 1: Kissimmee .....	Miccosukee Tribe of Florida.	1.25 (0.5)	1.25 (0.5)	Tribal fee lands.
Unit 6: Big Cypress .....	Seminole Tribe of Florida.	14,455 (5,850)	14,455 (5,850)	Tribal Trust lands; under natural resource management plans.
Unit 9: Miami Rocklands	Coral Reef Commons ....	104 (42)	104 (42)	Lands under HCP specifically addressing the species.

In conclusion, for this revised proposed rule, we have reason to consider excluding the areas identified above based on other relevant impacts. We specifically solicit comments on the inclusion or exclusion of such areas. During the development of a final designation, we will consider any information currently available or received during the public comment period regarding other relevant impacts of this revised proposed designation and will determine whether these or any other specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 17.90.

**Required Determinations**

*Clarity of the Rule*

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

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

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

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

Executive Order 12866 provides that the Office of Information and Regulatory

Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

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

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement

(avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt this revised proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed in this document, the revised proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether this revised proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, this revised proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

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

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this revised proposed critical habitat designation would significantly affect energy supplies, distribution, or use. As most of the area included in this revised proposed critical habitat designation occurs on conservation lands (approximately 89 percent), the likelihood of energy development within critical habitat is low. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.”

These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or Tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

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

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100

million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Florida bonneted bat in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the revised proposed designation of critical habitat for Florida bonneted bat, and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between

the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

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

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this revised proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and this revised proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

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

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

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

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

to make information available to Tribes. Some areas within the revised proposed designation are included in lands managed by the Seminole Tribe of Florida and Miccosukee Tribe of Indians of Florida (see Units 1 and 6 descriptions; see also *Consideration of Other Relevant Impacts*, above), constituting a total of approximately 14,457 ac (5,851 ha) of Tribal land being proposed as critical habitat. We will continue to work with Tribal entities during the development of a final rule designating critical habitat for the Florida bonneted bat.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service’s Florida Ecological Services Field Office.

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

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

**Proposed Regulation Promulgation**

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

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

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

- 2. In § 17.11, amend the table in paragraph (h) by revising the entry for “Bat, Florida bonneted” under MAMMALS to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

*	*	*	*	*
(h) * * *				

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
<b>Mammals</b>				
*	*	*	*	*
Bat, Florida bonneted ....	<i>Eumops floridanus</i> .....	Wherever found .....	E	78 FR 61004, 10/2/2013; 50 CFR 17.95(a). <sup>CH</sup>

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
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■ 3. In § 17.95, amend paragraph (a) by adding an entry for “Florida Bonneted Bat (*Eumops floridanus*)” before the entry for “Indiana Bat (*Myotis sodalis*)” to read as follows:

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

(a) *Mammals.*

Florida Bonneted Bat (*Eumops floridanus*)

(1) Critical habitat units are depicted for Charlotte, Collier, DeSoto, Glades, Hardee, Hendry, Highlands, Lee, Miami-Dade, Monroe, Okeechobee, Osceola, and Polk Counties, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Florida bonneted bat consist of the following components:

(i) Habitats that provide for roosting and rearing of offspring. Such habitat provides structural features for rest, digestion of food, social interaction, mating, rearing of young, protection from sunlight and adverse weather conditions, and cover to reduce predation risks for adults and young, and is generally characterized by:

(A) Live or dead trees and tree snags, especially longleaf pine, slash pine, bald cypress, and royal palm, that are on average 57 feet (ft) (17 meters (m)) in height and with an average 15-inch (38-centimeter) diameter at breast height and that are emergent from the surrounding canopy (by an average 16 ft (5 m)); and

(B) Sufficient unobstructed space, with cavities averaging 35 ft (10.7 m) above the ground and roost trees averaging 14 ft (4 m) from the nearest tree, for Florida bonneted bats to emerge from roost trees; this may include open or semi-open canopy and canopy gaps.

(ii) Habitats that provide adequate prey and space for foraging, which may vary widely across the Florida bonneted bat’s range, in accordance with ecological conditions, seasons, and

disturbance regimes that influence vegetation structure and prey species’ distributions. Foraging habitat may be separate and relatively far from roosting habitat. Essential foraging habitat consists of open areas in or near areas of high insect production or congregation, commonly including, but not limited to:

(A) Freshwater edges, and freshwater herbaceous wetlands (permanent or seasonal);

(B) Prairies;

(C) Wetland and upland shrub; and/or

(D) Wetland and upland forests.

(iii) A dynamic disturbance regime (e.g., fire, hurricanes, forest management) that maintains and regenerates forested habitat, including plant communities, open habitat structure, and temporary gaps, which is conducive to promoting a continual supply of roosting sites, prey items, and suitable foraging conditions.

(iv) A sufficient quantity and diversity of habitats to enable the species to be resilient to short-term impacts associated with disturbance over time (e.g., drought, forest disease). The ecological communities the Florida bonneted bat inhabits differ in hydrology, fire frequency/intensity, climate, prey species, roosting sites, and threats, and include, but are not limited to:

(A) Pine rocklands;

(B) Cypress communities (cypress swamps, strand swamps, domes, sloughs, ponds);

(C) Hydric pine flatwoods (wet flatwoods);

(D) Mesic pine flatwoods; and

(E) High pine.

(v) Habitats that provide structural connectivity where needed to allow for dispersal, gene flow, and natural and adaptive movements, including those that may be necessitated by climate change. These connections may include linear corridors such as vegetated,

riverine, or open-water habitat with opportunities for roosting and/or foraging, or patches (i.e., stepping stones) such as tree islands or other isolated natural areas within a matrix of otherwise low-quality habitat.

(vi) A subtropical climate that provides tolerable conditions for the species such that normal behavior, successful reproduction, and rearing of offspring are possible.

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

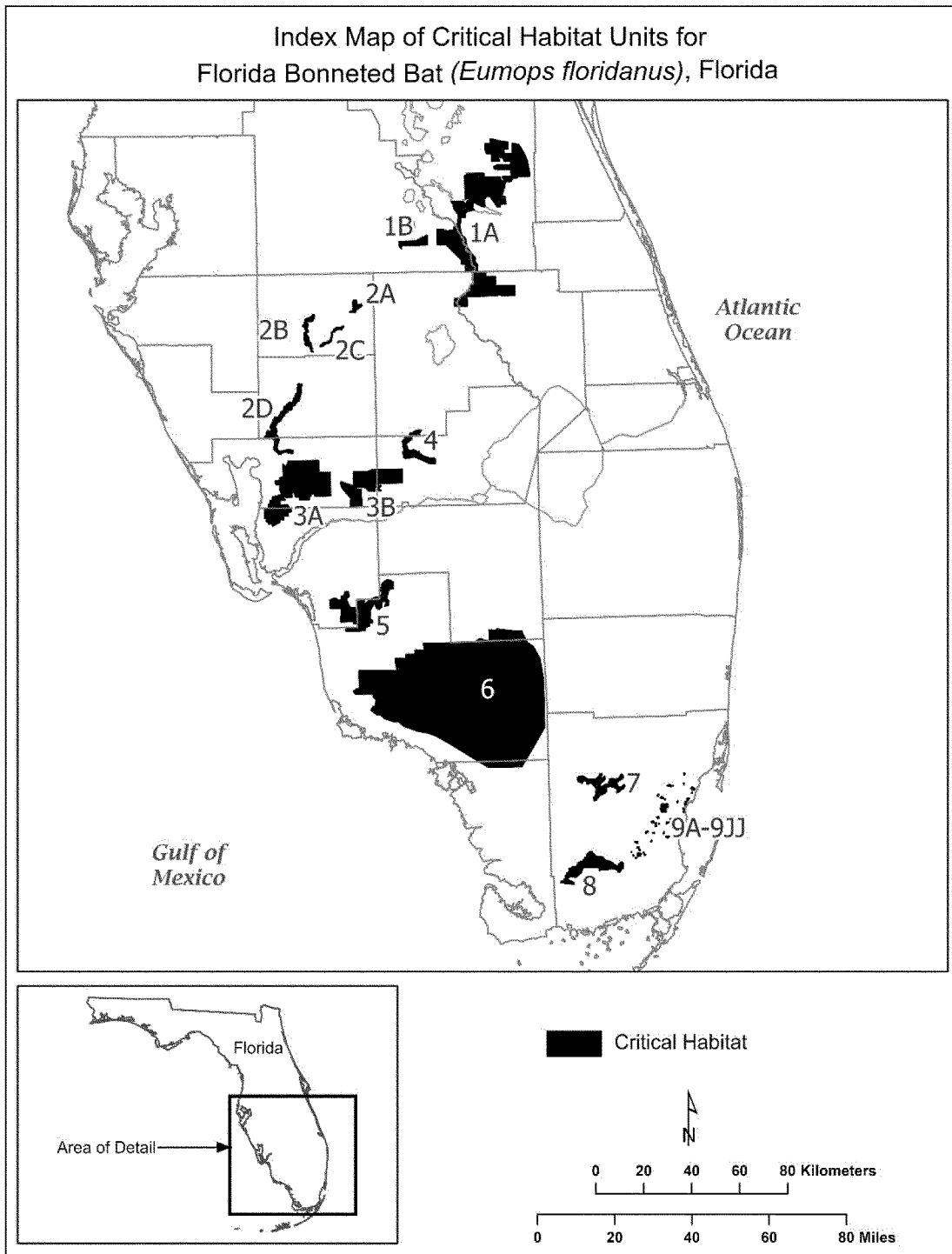
(4) Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was World Geodetic System 1984, Universal Transverse Mercator Zone 17 North. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <https://www.regulations.gov> at Docket No. FWS–R4–ES–2019–0106, the Florida Ecological Services Field Office website at <https://www.fws.gov/office/florida-ecological-services/library>, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (5)

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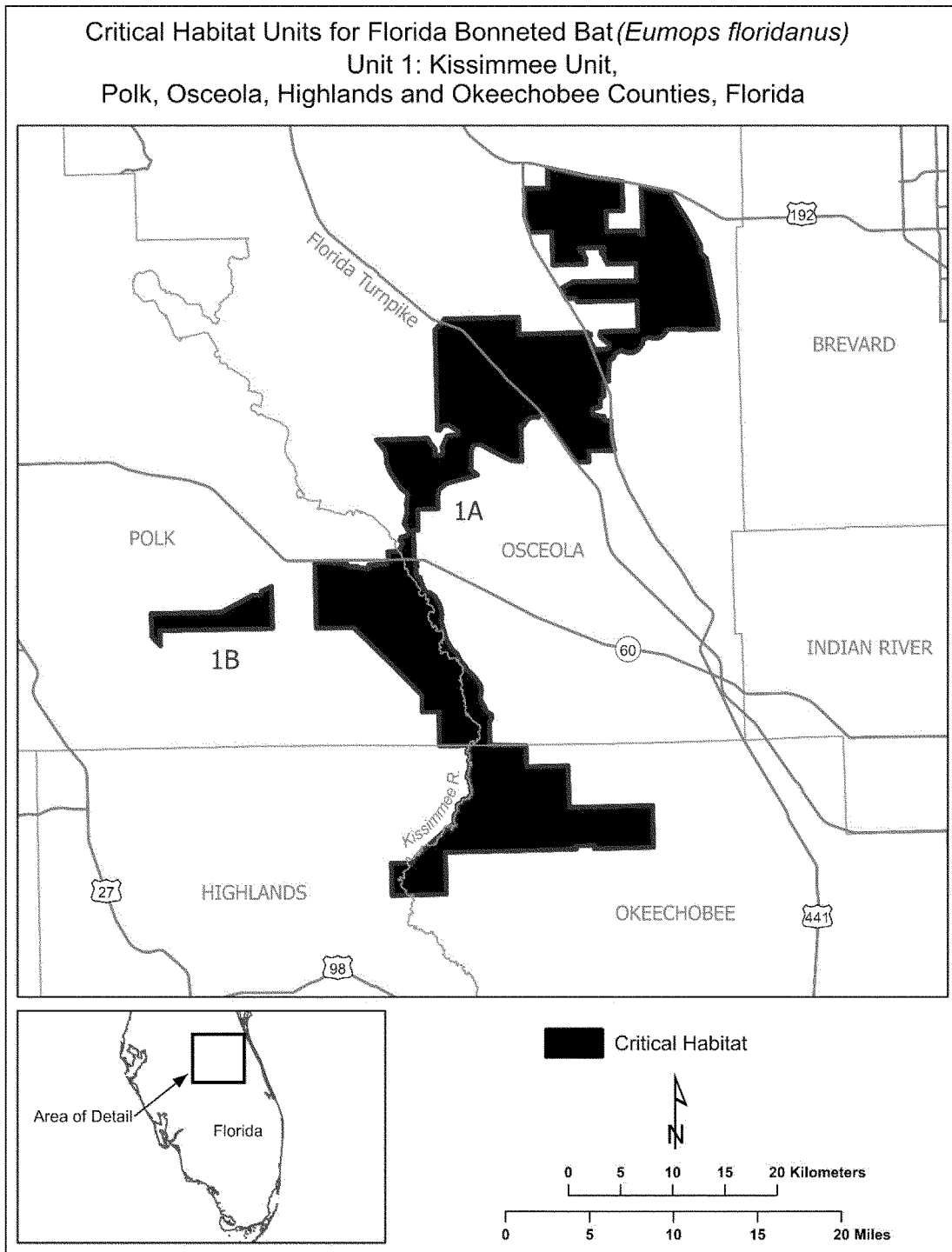
(6) Unit 1: Kissimmee Unit; Polk, Osceola, Highlands, and Okeechobee Counties, Florida.

(i) Unit 1 encompasses 175,737 acres (ac) (71,118 hectares (ha)) of lands in

Polk, Osceola, Highlands, and Okeechobee Counties, Florida. This unit consists of two subunits generally located along the eastern bank of Lake Kissimmee northeast to SR-192, north

of SR-60; and along portions of the Kissimmee River, south of SR-60.

(ii) Map of Unit 1 follows: Figure 2 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (6)(ii)

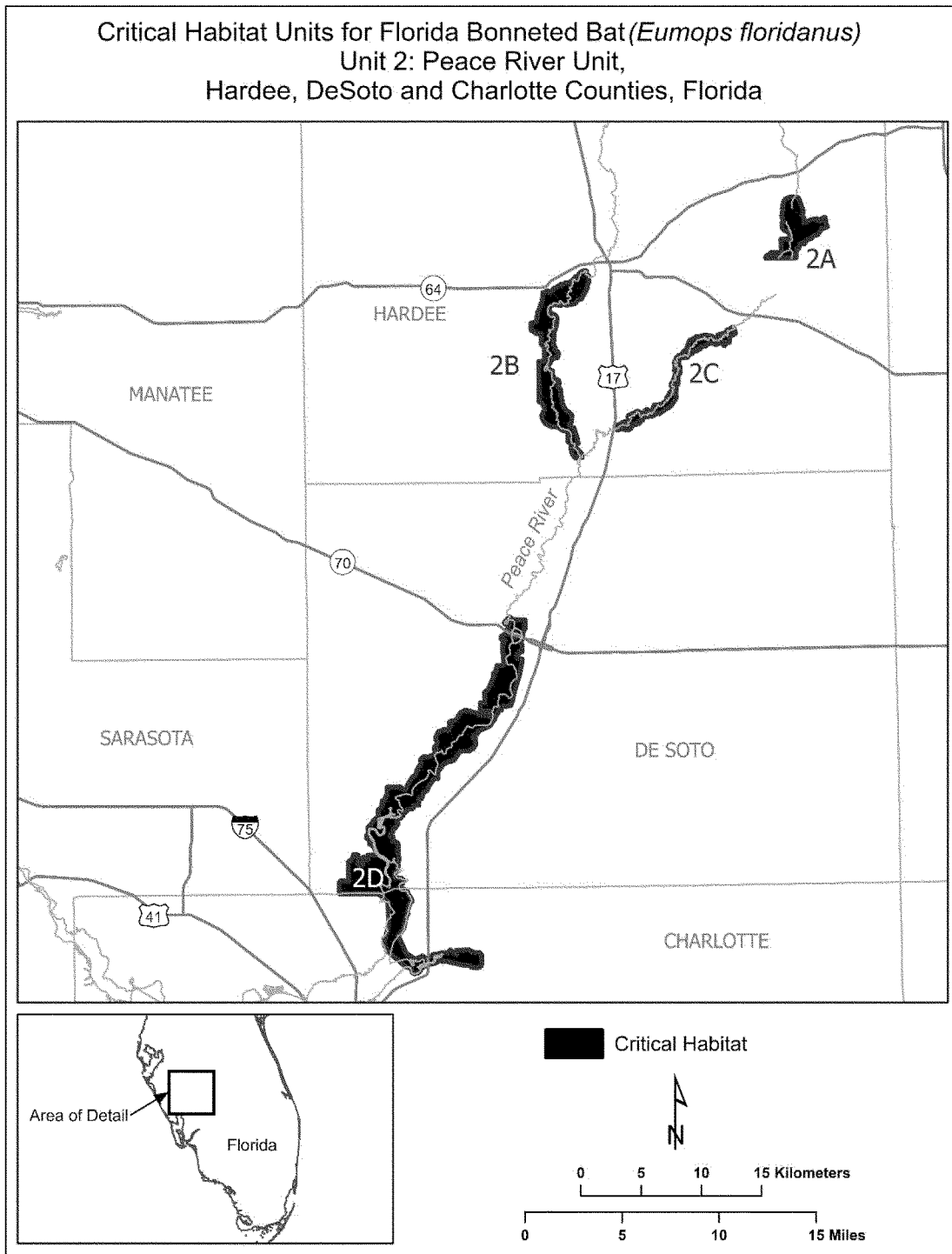


(7) Unit 2: Peace River Unit; Hardee, DeSoto, and Charlotte Counties, Florida.

(i) Unit 2 encompasses 28,046 ac (11,350 ha) of lands in Hardee, DeSoto, and Charlotte Counties, Florida. This

unit consists of four subunits located along portions of the Peace River and its tributaries (e.g., Shell Creek, Charlie Creek), south of CR-64 with the majority west of U.S.-17.

(ii) Map of Unit 2 follows: Figure 3 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (7)(ii)

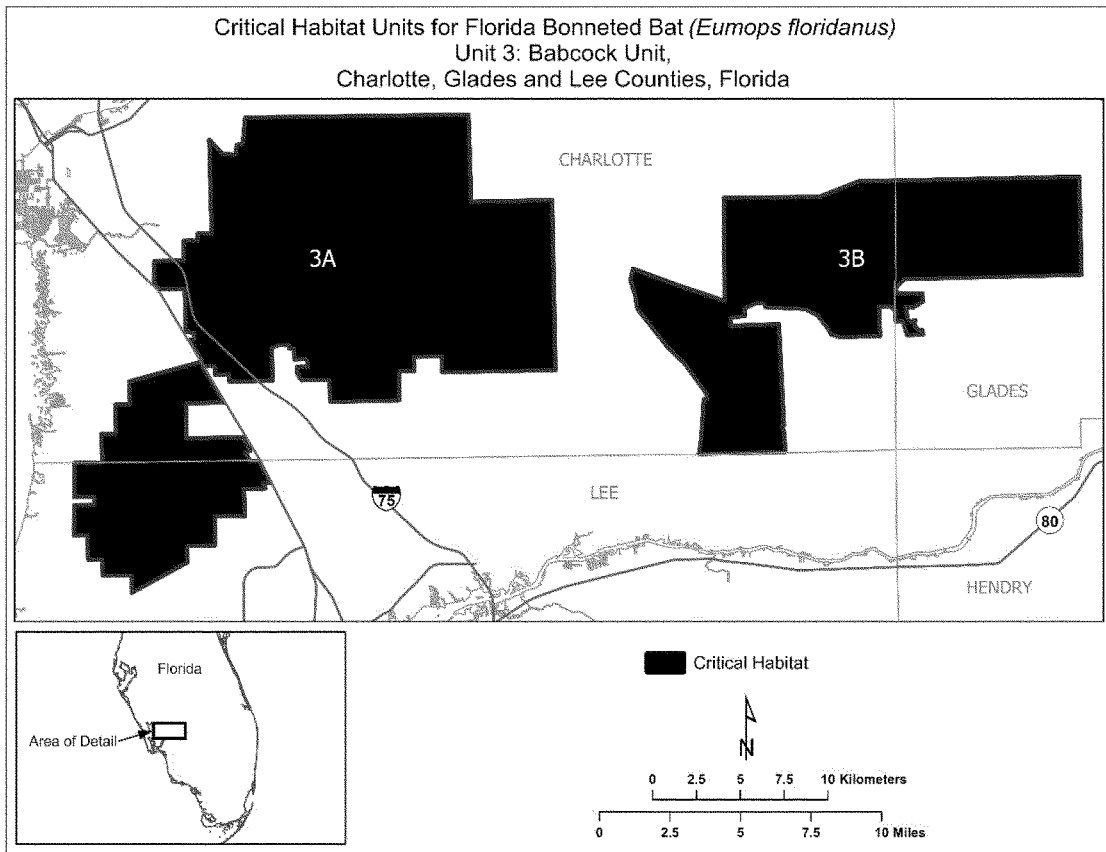


(8) Unit 3: Babcock Unit; Charlotte, Lee, and Glades Counties, Florida.

(i) Unit 3 encompasses 133,560 ac (54,050 ha) of lands in Charlotte, Lee, and Glades Counties, Florida. This unit

consists of two subunits, with the majority of Unit 3 located in Charlotte County, east of I-75; other portions are in northwestern Lee and western Glades Counties.

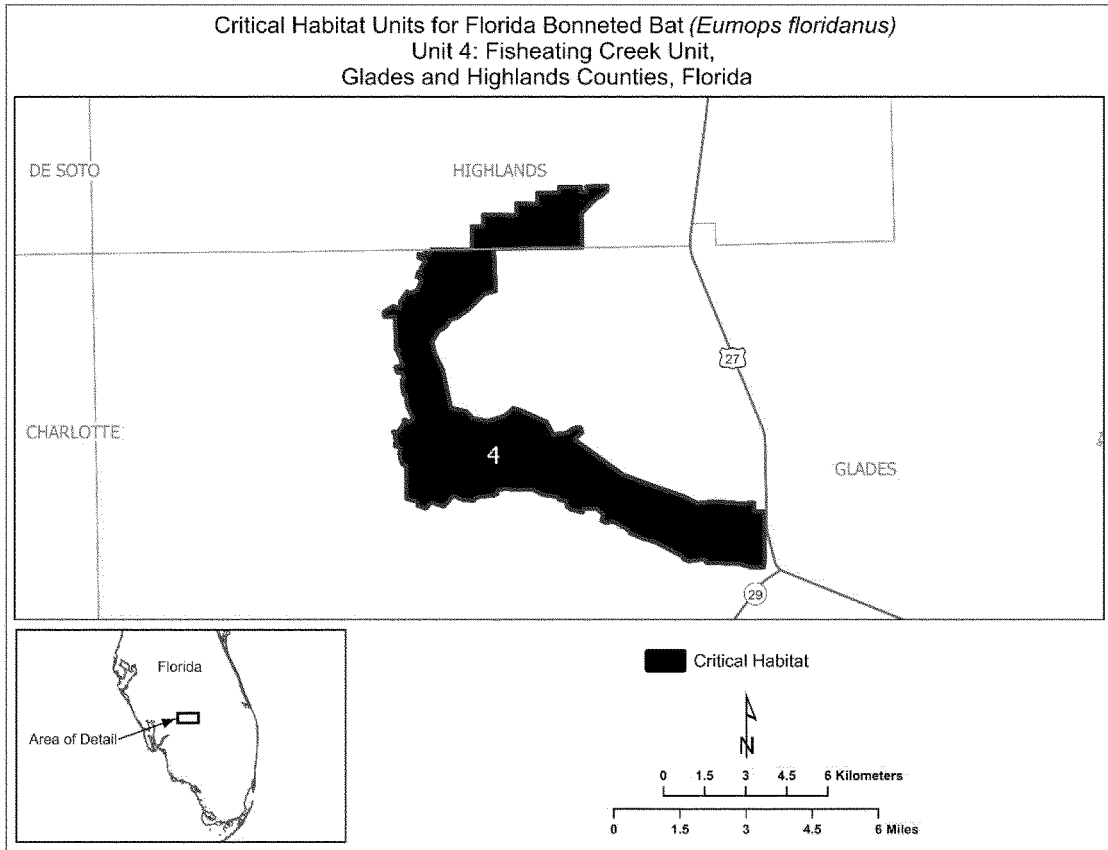
(ii) Map of Unit 3 follows: Figure 4 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (8)(ii)



(9) Unit 4: Fisheating Creek Unit; Glades and Highlands Counties, Florida.  
 (i) Unit 4 encompasses 12,995 ac (5,259 ha) of lands in Glades and Highlands Counties, Florida. The majority of Unit

4 is located in Glades County, west of U.S.-27; the remainder of the unit extends north into southern Highlands County.  
 (ii) Map of Unit 4 follows:

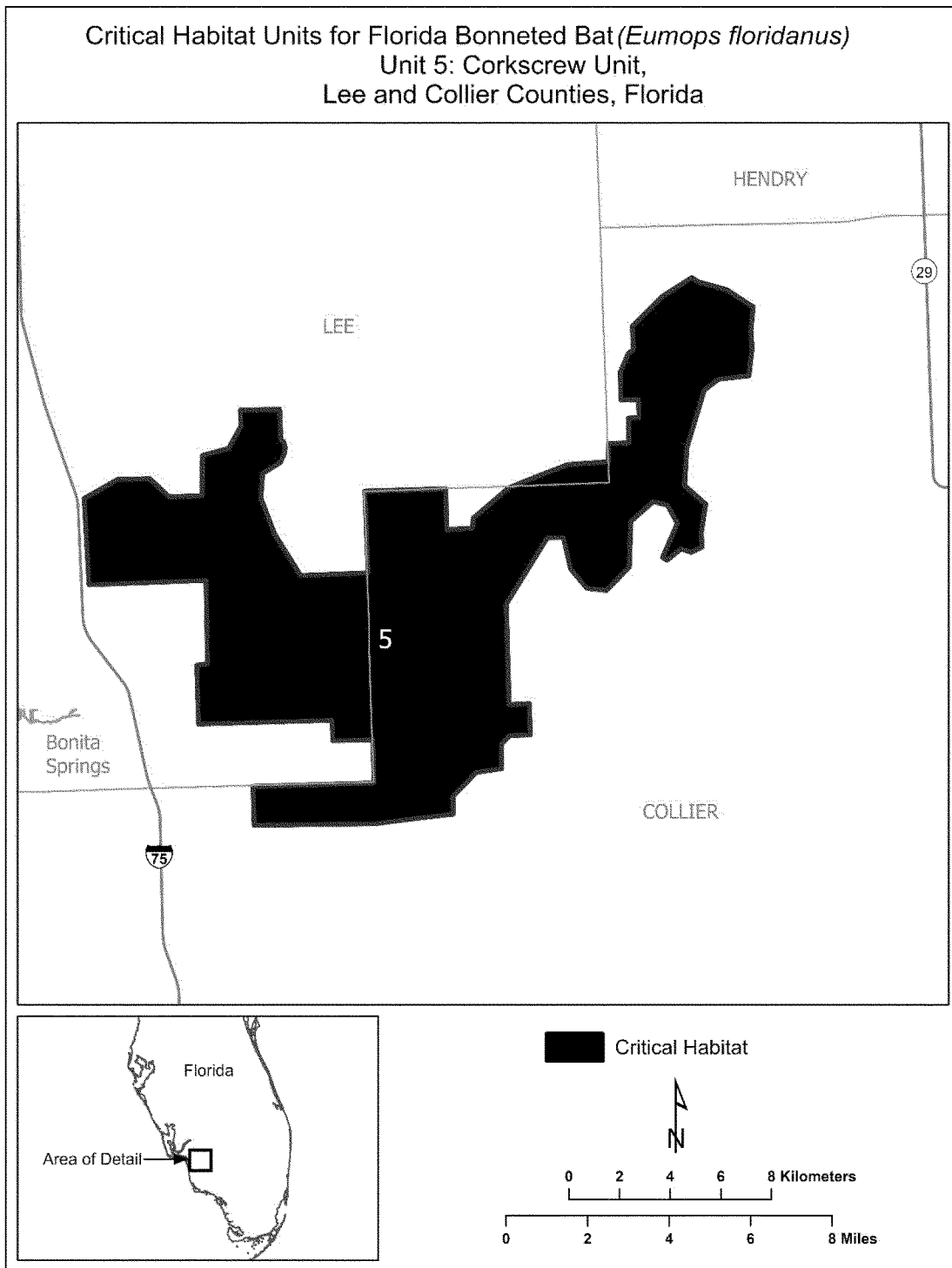
Figure 5 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (9)(ii)



(10) Unit 5: Corkscrew Unit; Lee and Collier Counties, Florida.  
 (i) Unit 5 encompasses 48,865 ac (19,775 ha) of lands in Lee and Collier

Counties, Florida. This unit straddles the Lee/Collier county line, east of I-75.  
 (ii) Map of Unit 5 follows:

Figure 6 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (10)(ii)

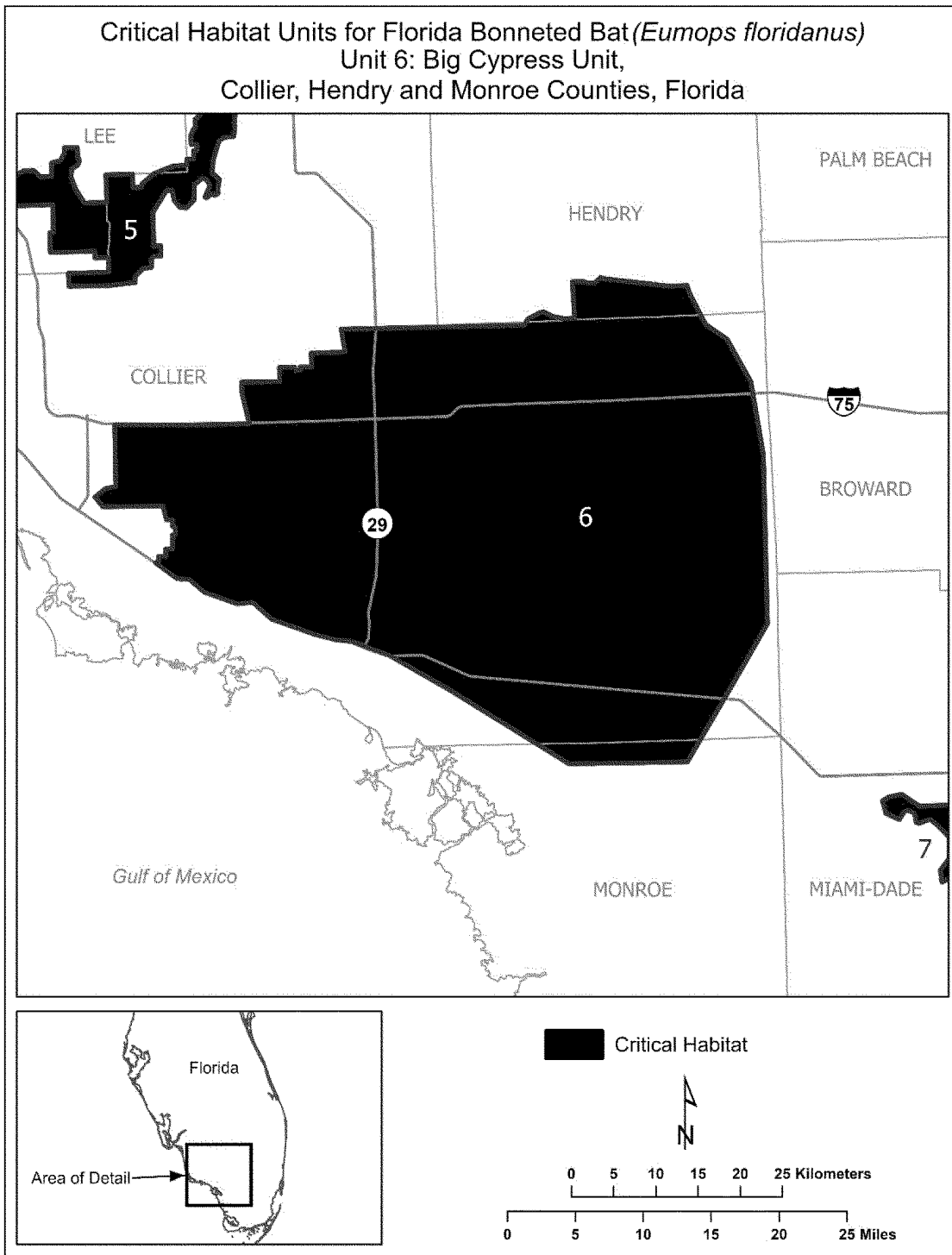


(11) Unit 6: Big Cypress Unit; Collier, Hendry, and Monroe Counties, Florida.

(i) Unit 6 encompasses 728,544 ac (294,831 ha) of lands in Collier, Hendry, and Monroe Counties, Florida. The

majority of Unit 6 is located in Collier County, south of I-75; the remainder of the unit occurs in southern Hendry County and mainland portions of Monroe County.

(ii) Map of Unit 6 follows:  
 Figure 7 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (11)(ii)



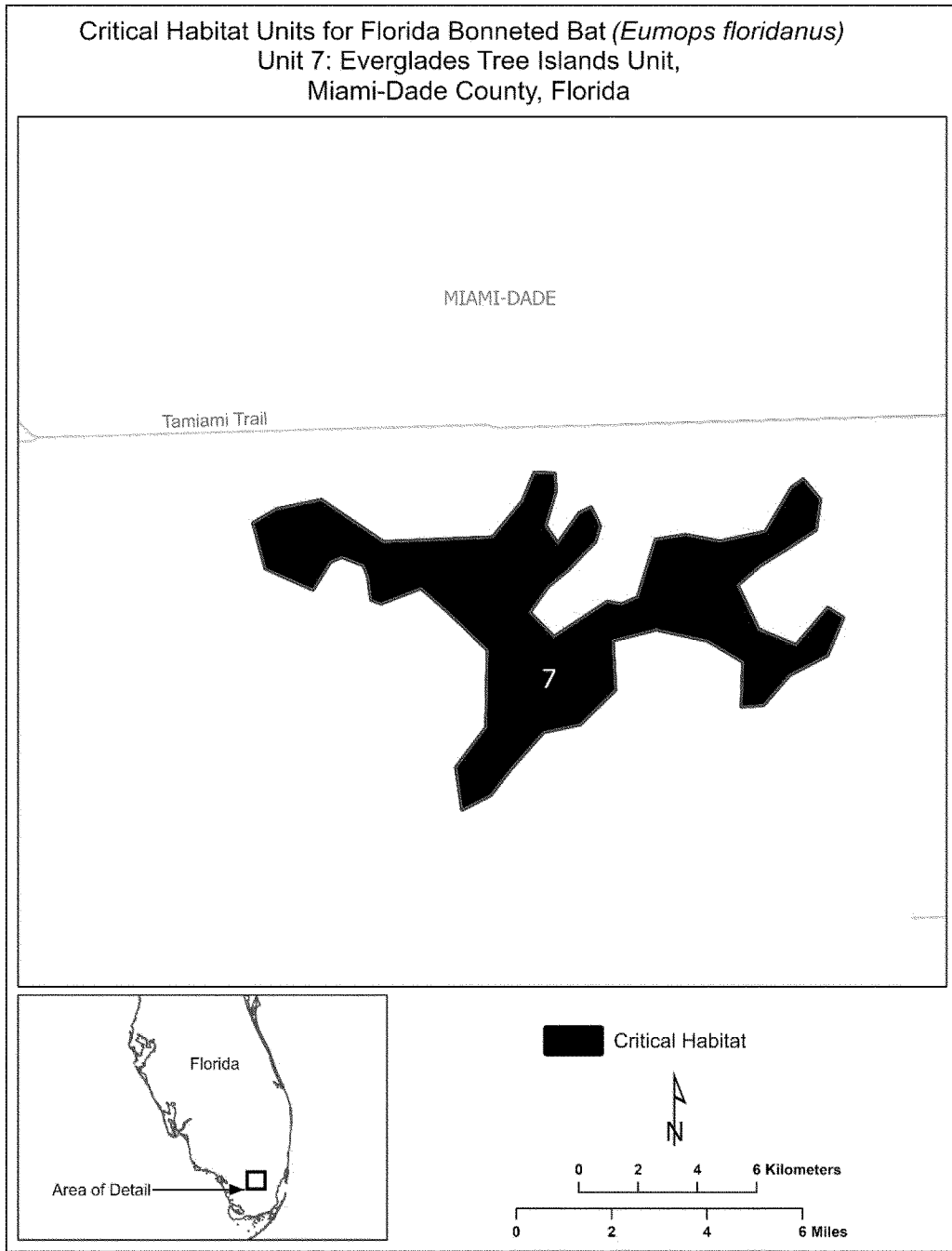
(12) Unit 7: Everglades Tree Islands Unit; Miami-Dade County, Florida.

(i) Unit 7 encompasses 16,604 ac (6,719 ha) of lands in Miami-Dade

County, Florida, south of Tamiami Trail and west of Krome Avenue.

(ii) Map of Unit 7 follows:

Figure 8 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (12)(ii)



(13) Unit 8: Long Pine Key Unit; Miami-Dade County, Florida.

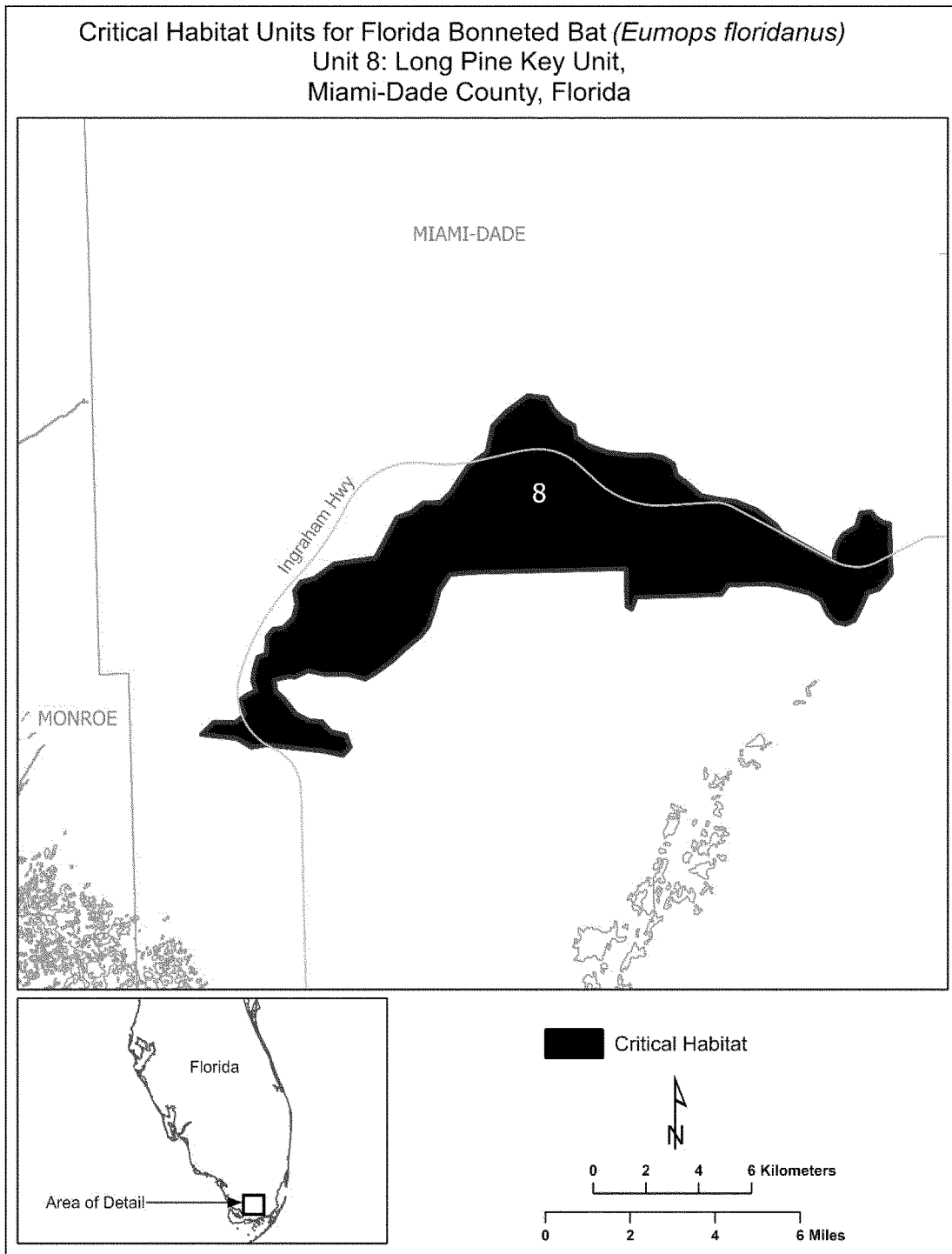
(i) Unit 8 encompasses 25,337 ac (10,254 ha) of lands in Miami-Dade

County, Florida, along Main Park Road (SR-9336) between Mahogany Hammock and SW 237th Avenue.

(ii) Map of Unit 8 follows:

Figure 9 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (13)(ii)





(14) Unit 9: Miami Rocklands Unit; Miami-Dade County, Florida.

(i) Unit 9 encompasses 4,324 ac (1,750 ha) of lands in Miami-Dade County, Florida. This unit consists of 36

subunits located between Tamiami Trail to the north and SR-9336 to the south, and is surrounded by a dense urban matrix typical of the Miami metropolitan area.

(ii) Maps of Unit 9 follow: Figure 10 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (14)(ii)

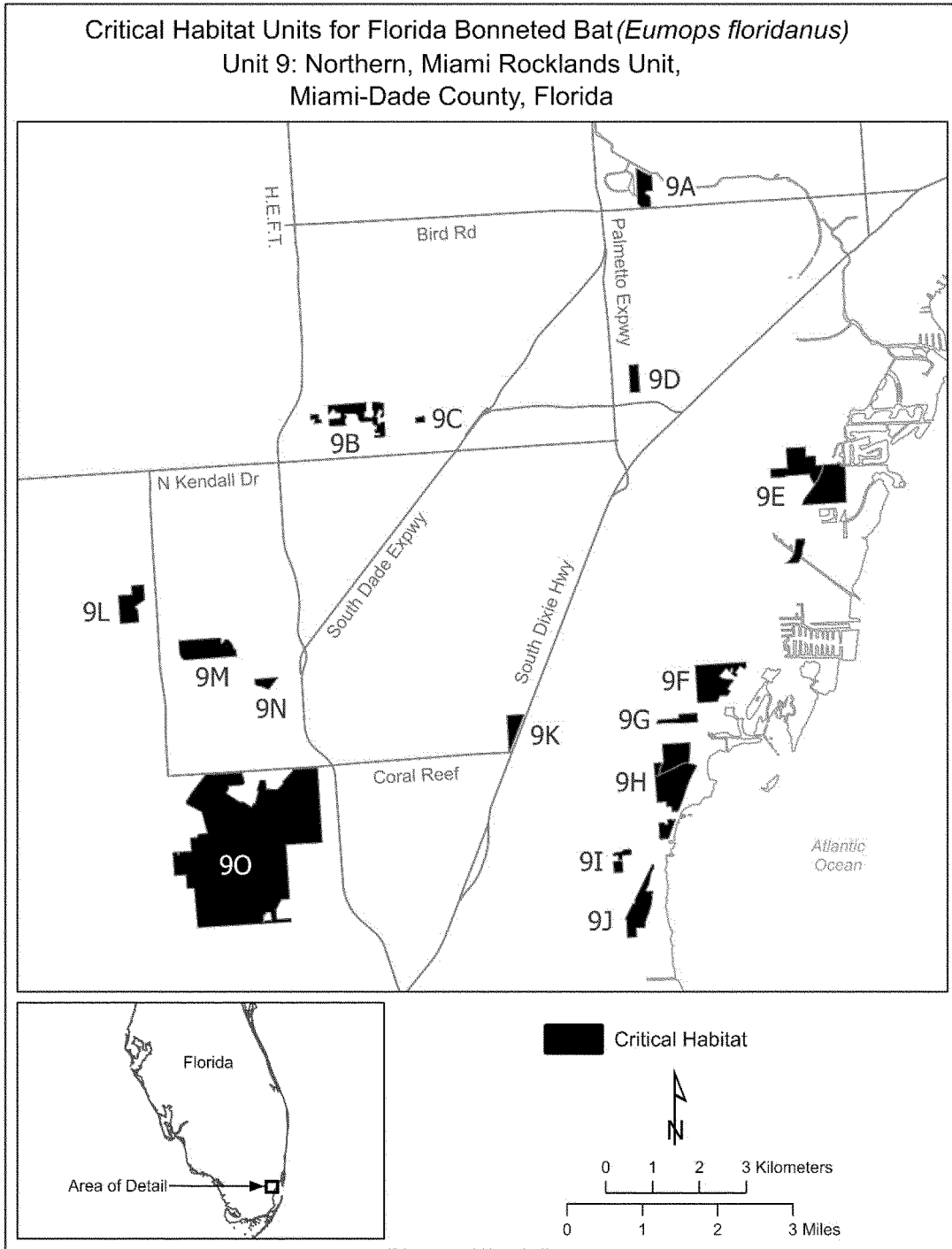


Figure 11 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (14)(ii)

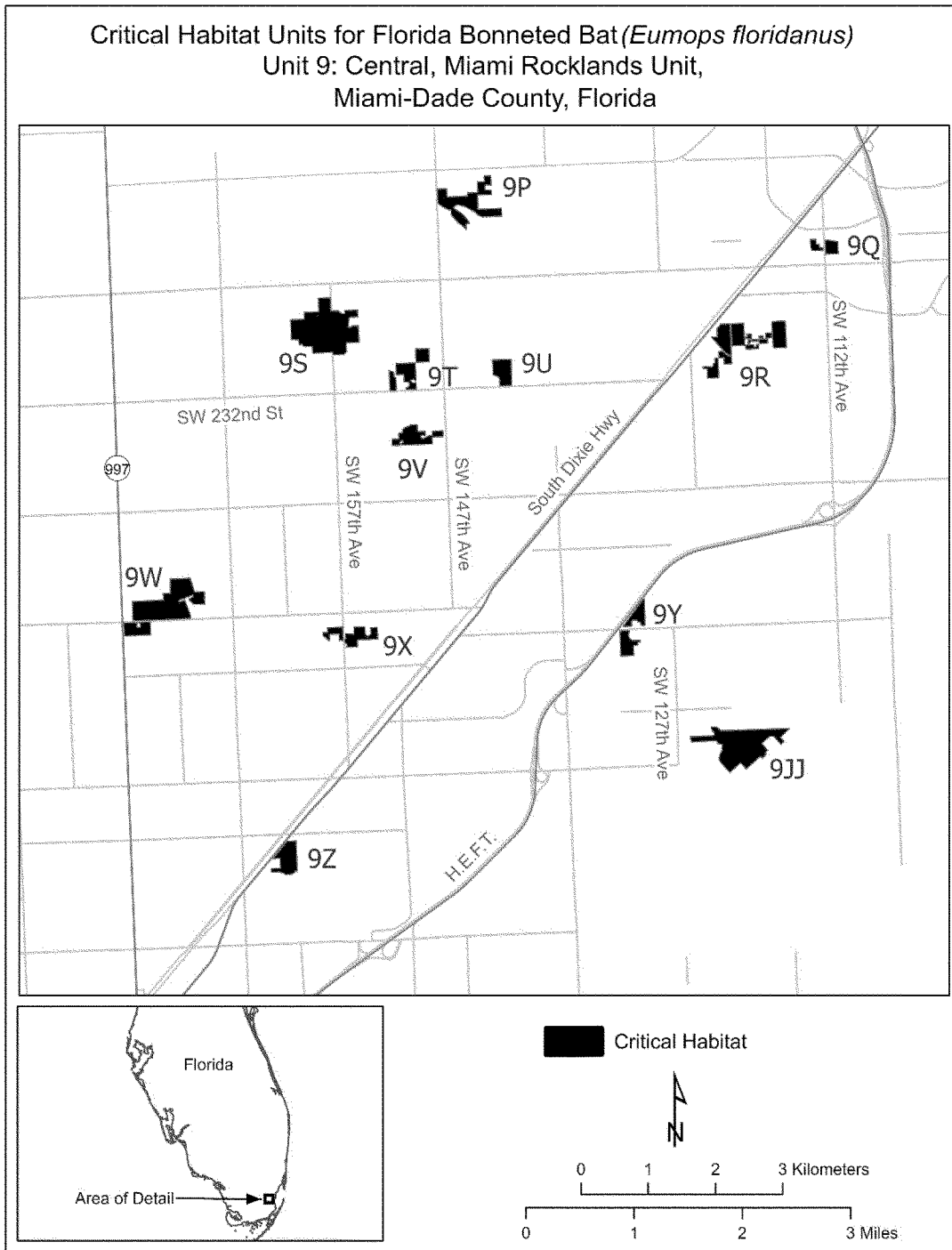
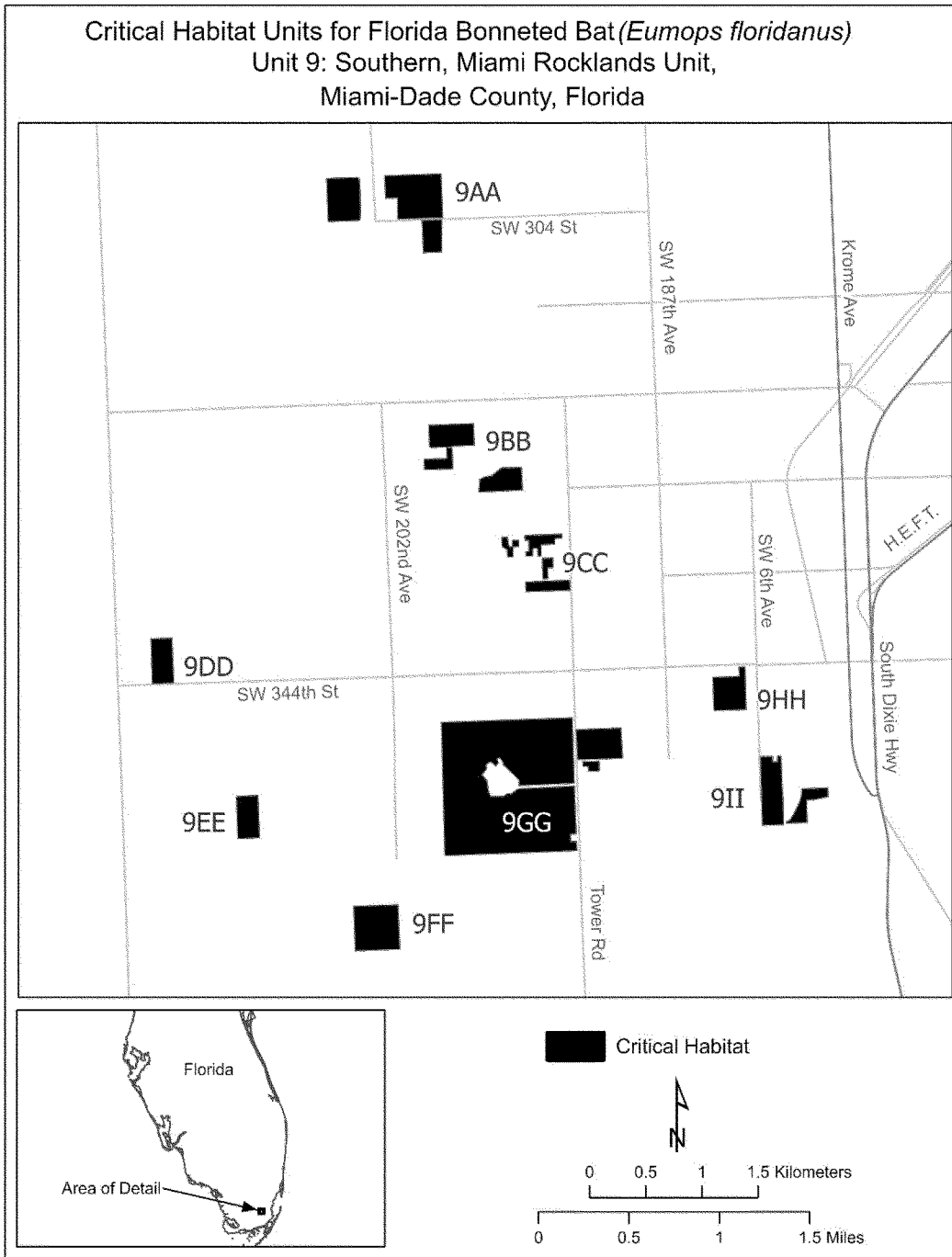


Figure 12 to Florida Bonneted Bat (*Eumops floridanus*) paragraph (14)(ii)



\* \* \* \* \*

**Stephen Guertin,**  
*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2022-25218 Filed 11-21-22; 8:45 am]

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