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By the Commission.

**Bryant L. VanBrakle,**  
Secretary.

[FR Doc. 04-1808 Filed 1-28-04; 8:45 am]

BILLING CODE 6730-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-A174

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

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

**ACTION:** Proposed rule; revisions to proposed critical habitat, reopening of comment period, and notice of availability of revised draft economic analysis.

**SUMMARY:** We, the Fish and Wildlife Service, give notice of a proposed extension of Units 18 (Scales Mountain), 19 (Sophie Hill), and 20 (Indian Mountain) and the addition of two new units in Rutherford and Wilson Counties, Tennessee (Unit 21-Grandfather Knob and Unit 22-Versailles Knob) to the proposed critical habitat for *Arabis perstellata* (Braun's rock-cress). We are reopening the comment period on the proposal to designate critical habitat for this plant species to allow all interested parties to comment on the proposed rule, including the new information regarding Units 18, 19, and 20, the two new proposed units in Tennessee (Units 21 and 22). We also announce the

availability of a revised draft economic analysis of the proposed designation.

**DATES:** The comment period is hereby reopened until March 1, 2004. Comments should be received from all interested parties by the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

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

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528-7075.

3. You may send comments by electronic mail (e-mail) to: [timothy\\_merritt@fws.gov](mailto:timothy_merritt@fws.gov). For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

Comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

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

#### **SUPPLEMENTARY INFORMATION:** **Public Comments Solicited**

We solicit comments on: (a) the original proposed critical habitat designation (June 3, 2003, 68 FR 33058); (b) the new information regarding the expanded, proposed critical habitat for three units in Tennessee and the addition of two new proposed critical habitat units in Tennessee which we present in this proposed rule document; and (c) the revised draft economic analysis. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

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

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

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

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

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-A174" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly at our Tennessee Field Office (see **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The revised draft economic analysis is available on the Internet at <http://cookeville.fws.gov>. You may request copies by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501, or by calling Timothy Merritt, Tennessee Field Office, at telephone 931/528-6481, extension 211.

#### **Background**

*Arabis perstellata* (Braun's rock-cress) was listed as an endangered species

under the Endangered Species Act of 1973, as amended (Act) on January 3, 1995 (60 FR 56). On June 3, 2003, we published a proposed critical habitat designation for *Arabis perstellata* in the **Federal Register** (68 FR 33058). The proposed designation included 20 critical habitat units in Kentucky and Tennessee—14 units in Franklin County, Kentucky; 3 in Owen County, Kentucky; and 3 in Rutherford County, Tennessee. Our descriptions of the proposed Critical Habitat Units 1 through 17 in the June 3, 2003, proposal, and our intentions to propose these areas, as described in the June 3, 2003, document, remain unchanged.

In the proposed rule, we mentioned that we had received new information from the Tennessee Department of the Environment and Conservation (TDEC) (D. Lincicome, pers. comm. 2003) regarding the extension of the range of one of the known populations of *Arabis perstellata* and existence of one new population. Additional occurrences of the known population were found on Townsel Hill, west of the City of Murfreesboro between Newman and Coleman Hill Roads in Rutherford County, Tennessee. This site is adjacent to the proposed Sophie Hill critical habitat site (Unit 19) and belongs to the same private landowner. The other population is located on Grandfather Knob (Unit 21) between Cainsville and Spain Hill Roads in Wilson County, Tennessee. These occurrences of *Arabis perstellata* were located following the drafting of the proposed critical habitat rule. Because of time constraints due to a court-ordered deadline as well as budgetary constraints, we were unable to formally and adequately analyze the sites containing additional occurrences and a new population to determine if they were essential to the conservation of the species and warranted inclusion into critical habitat. We have since conducted an analysis of *Arabis perstellata* and its habitat on these two sites and have determined these areas to be essential to the conservation of *Arabis perstellata* (see discussion below). Therefore, we now propose them for inclusion in this proposed rulemaking.

During the open comment period (June 3, 2003, to August 4, 2003), we received additional information from TDEC regarding extended ranges of two other known populations (Units 18 and 20) and the discovery of a new population at Versailles Knob in Rutherford County, Tennessee. We have also analyzed this new information and determined that the extension of the populations at Units 18 and 20 and the new population at Versailles Knob (Unit

22) are essential to the conservation of *Arabis perstellata* (see discussion below). Consequently, we are reopening the comment period to allow for public comment on our proposal to revise the published proposed critical habitat designation for Units 18, 19, and 20 and to propose Units 21 and 22, as set forth in our Proposed Regulation Promulgation.

The revised proposed designation for *Arabis perstellata* now encompasses a total of approximately 648 hectares (ha) (1,600 acres (ac)) of upland habitat, approximately 328 ha (810 ac) in Kentucky and approximately 320 ha (790 ac) in Tennessee. This is an increase in the amount of land proposed as critical habitat for *Arabis perstellata* in Tennessee from the 80 ha (198 ac) originally proposed. The proposed designation and associated materials can be viewed at <http://cookeville.fws.gov>.

#### **Evaluation of Documented New Populations of *Arabis perstellata***

When we originally proposed critical habitat for *Arabis perstellata* for 20 units in Kentucky and Tennessee, we used several factors in the selection of these units (June 3, 2003, 68 FR 33058). We assessed the objectives and criteria as discussed in the July 1997 final recovery plan for *Arabis perstellata*, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. Based on the objectives and criteria in the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after 5 years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations. Consequently, in our proposal of June 3, 2003, we proposed 17 of the 37 sites containing known populations of *Arabis perstellata* in Kentucky as critical habitat. In Tennessee, we proposed three of the four known sites containing *Arabis perstellata* as critical habitat.

A survey for new populations of *Arabis perstellata* unrelated to this proposed critical habitat rule was conducted in the spring and early summer of 2003 by Tennessee Division of Natural Heritage personnel. During

this survey effort, the distribution of *Arabis perstellata* was found to be more widespread at the three extant populations (Units 18, 19, and 20) and two new populations were documented (Grandfather Mountain and Versailles Knob). The expansion of the population of *Arabis perstellata* within Unit 19 and the newly documented population of the species on Grandfather Mountain were discussed in our June 2003 proposed critical habitat rule. However, the discovery of additional occurrences of *Arabis perstellata* that resulted in the proposed expansions of Units 18 and 20 and the newly documented population on Versailles Knob did not occur until the end of the comment period for the June 2003 proposed rule. The discovery of these occurrences and additional new populations of *Arabis perstellata* is significant because it has nearly doubled the size of the known distribution of the species in Tennessee. Based on this new information gathered during the 2003 survey efforts by TDEC, we are revising and enlarging the extent of critical habitat proposed on June 3, 2003 (68 FR 33058) for Units 18, 19, and 20, to include the new occurrences of *Arabis perstellata* and its essential habitat.

Further, in our June 2003, proposed rule, we indicated that we were aware of 4 occurrences of *Arabis perstellata* in Tennessee, of which, we proposed 3 as critical habitat. As a result of the new information from the TDEC surveys, we have learned that the site in Davidson County, Tennessee, which was not proposed as critical habitat, actually contains a different plant species. The species at this site has been identified as *Arabis shortii* (Short's rockcress).

We are also revising 68 FR 33058 to add a proposal to designate as critical habitat the sites where the newly documented populations of *Arabis perstellata* were found on Grandfather Mountain (Unit 21) in Wilson County, Tennessee, and also that on Versailles Knob (Unit 22) in Rutherford County, Tennessee. Both areas contain one or more of the primary constituent elements for *Arabis perstellata*. In addition, the two newly discovered populations increase the present distribution of the plant throughout its southern range. Previously, only three populations of *Arabis perstellata* were known to occur in Tennessee. The discovery of these two new populations, with well over 100 plants each, increases the number of populations in Tennessee from 3 to 5. Because of the limited known distribution of *Arabis perstellata*, and because the populations in Tennessee are geographically disjunct from the 37 *Arabis perstellata*

populations in Kentucky, all 5 populations in Tennessee have been determined to be essential to ensure the plant's long-term conservation in order to meet the recovery plan criteria of having protected populations distributed throughout the species' range of Kentucky and Tennessee.

#### **Proposed Revisions to Units 18, 19, and 20 and Proposed Units 21 and 22**

##### *Unit 18. Scales Mountain in Rutherford County, Tennessee*

This unit is located on private property west of the City of Murfreesboro on Scales Mountain, 1.6 km (1 mile) south of Highway 96. Based on the new information, *Arabis perstellata* has now been documented on all three knobs of Scales Mountain. The plant and habitat are most abundant on the central and eastern knobs of Scales Mountain. However, our original proposed designation of critical habitat for this unit, approximately 36 ha (89 ac) in size, only included the eastern knob. The central and eastern knobs are estimated to contain more than 200 plants, while the western knob contains approximately 100 plants (TDEC 2003). We believe that the *Arabis perstellata* plants found on these three knobs comprise a single population. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. We, therefore, are revising Critical Habitat Unit 18 proposed in 68 FR 33058 to include all three knobs of Scales Mountain. The revised critical habitat unit is approximately 103 ha (255 ac) in size and is fully under private ownership.

##### *Unit 19. Sophie Hill in Rutherford County, Tennessee*

In our June 2003, proposed critical habitat (68 FR 33058), we identified Unit 19 as being approximately 16 ha (40 ac) in size and located west of the City of Murfreesboro on Sophie Hill, which lies between Newman and Coleman Hill Roads. During the 2003 surveys by TDEC, in excess of 300 *Arabis perstellata* plants were documented on the adjacent Townsel Hill. This population is larger than that found on Sophie Hill, which is estimated to contain approximately 200 plants. Due to the physical proximity of the two locations, Sophie Hill and Townsel Hill, we believe that the occurrences of *Arabis perstellata*

documented at these sites are one population, containing over 500 standing plants. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. Accordingly, we are expanding the Critical Habitat Unit 19 proposed in 68 FR 33058 to include the Townsel Hill occurrences. The new size of this unit would be 53 ha (132 ac). Both hills are privately owned.

##### *Unit 20. Indian Mountain in Rutherford County, Tennessee*

Unit 20 is located west of the City of Murfreesboro on Indian Mountain, between Highway 96 and Coleman Hill Road. During the development of our June 2003 proposed critical habitat (68 FR 33058), we believed that that *Arabis perstellata* occurred only on the eastern and central knobs of Indian Mountain. However, based on the survey efforts by TDEC (2003), *Arabis perstellata* has now been documented to be abundant on all three knobs of Indian Mountain, including two new occurrences that together contain more than 300 plants in good to excellent habitat. Because of the proximity of the occurrences, it is assumed that these occurrences constitute one population. Based on the recovery criteria for the species as outlined in the final recovery plan, the estimated size of this population, and its location within the southern portion of the species' range, we have determined that the additional documented habitat containing *Arabis perstellata* is essential to the conservation of this plant. Consequently, we are revising the critical habitat proposed in 68 FR 33058 for Unit 20 to include all three knobs of Indian Mountain. The resulting Unit 20 is estimated to be 87 ha (214 ac) of privately owned land.

##### *Unit 21. Grandfather Knob in Wilson County, Tennessee*

During the 2003 surveys by TDEC, two new occurrences of *Arabis perstellata* were located on Grandfather Knob in Wilson County, Tennessee. This finding represents the first documented occurrence of *Arabis perstellata* in Wilson County. The plant and its habitat are abundant at both sites. More than 150 plants occur at the two sites, and due to their physical proximity, we believe that they comprise a single population. This population is 20 miles (32 kilometers) from the nearest extant *Arabis*

*perstellata* population in Tennessee, making this an important find from the aspect of reducing the probability of a catastrophic event impacting so many populations (Units 18, 19, and 20 all occur within close proximity of each other). The site contains one or more of the primary constituent elements essential for the conservation of *Arabis perstellata*. Therefore, we are revising 68 FR 33058 to add a proposal to designate 43 ha (106 ac) on Grandfather Knob as new Critical Habitat Unit 21. The site is privately owned.

##### *Unit 22. Versailles Knob in Rutherford County, Tennessee*

During the 2003 surveys by TDEC, one new occurrence was found on Versailles Knob in Rutherford County, Tennessee. More than 200 plants were documented to occur on this knob. This population is 11 miles (18 kilometers) from the nearest extant *Arabis perstellata* population in Tennessee, which also makes this an important find from the aspect of reducing the probability of a catastrophic event impacting so many populations (Units 18, 19, and 20 all occur within close proximity of each other). Because the site contains one or more of primary constituent elements essential for the conservation of *Arabis perstellata*, we are revising 68 FR 33058 to add a proposal to designate approximately 34 ha (83 ac) Versailles Knob as new Critical Habitat Unit 22. The site is privately owned.

#### **Exclusions Under Section 4(b)(2)**

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. 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 as critical habitat, provided that such exclusion will not result in the extinction of the species. In the June 3, 2003, proposed designation of critical habitat for *Arabis perstellata* (68 FR 33058), we announced the availability of the draft economic analysis of the proposed designation. However, as a result of the subject revisions to the proposed critical habitat discussed herein, we have reevaluated the potential economic impact of the proposed designation, taking into consideration the revisions to Units 18, 19, and 20 and the inclusion of Units 21 and 22. Accordingly, we have prepared a revised draft economic analysis of the

proposed critical habitat designation, and are making it available for review and comment (see **ADDRESSES** section).

#### Author

The primary author of this document is Timothy Merritt (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

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

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

#### Proposed Regulation Promulgation

For the reasons stated in the preamble, we propose to amend the proposed amendments to part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as published in the **Federal Register** of June 3, 2003, starting on page 33058, as follows:

#### PART 17—[AMENDED]

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

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

2. In § 17.96, as proposed to be amended by 68 FR 33058, amend paragraph (a) by removing paragraphs (21) through (24) in the entry for

“Family Brassicaceae” *Arabis perstellata* and adding new paragraphs (21) through (26), to read as follows:

#### § 17.96 Critical habitat—plants.

(a) \* \* \*

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

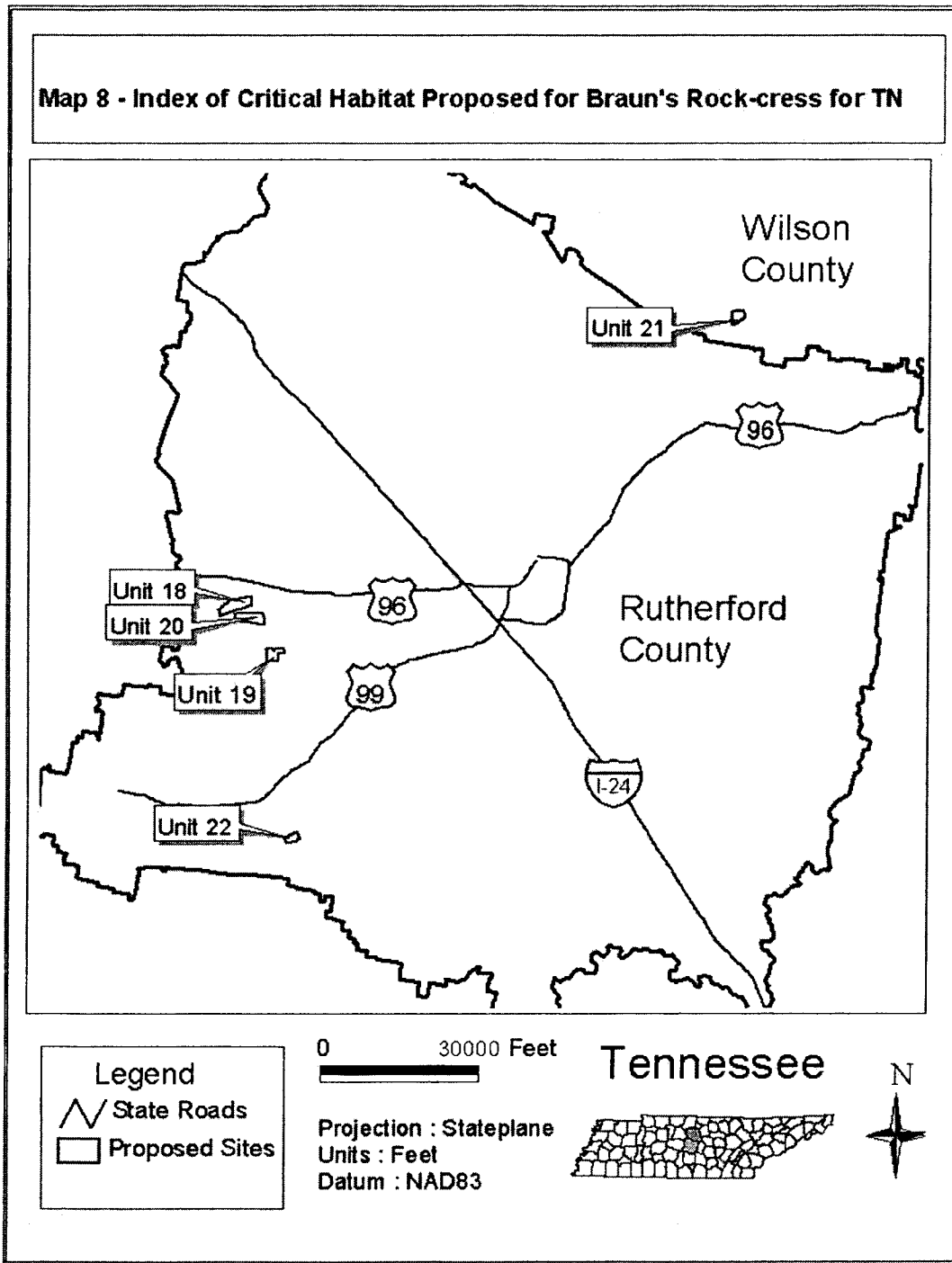
\* \* \* \* \*

(21) Index map for Tennessee.

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

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

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(22) Unit 18: Scales Mountain, Rutherford County, Tennessee.  
 From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N):  
 1796404.35, 548844.10; 1797871.97, 548892.57; 180101.59, 549457.83; 1800070.19, 547856.27; 1797934.77, 547071.19; 1794371.09, 545752.45; 1794062.13, 546793.75.  
 (23) Unit 19: Sophie Hill, Rutherford County, Tennessee.

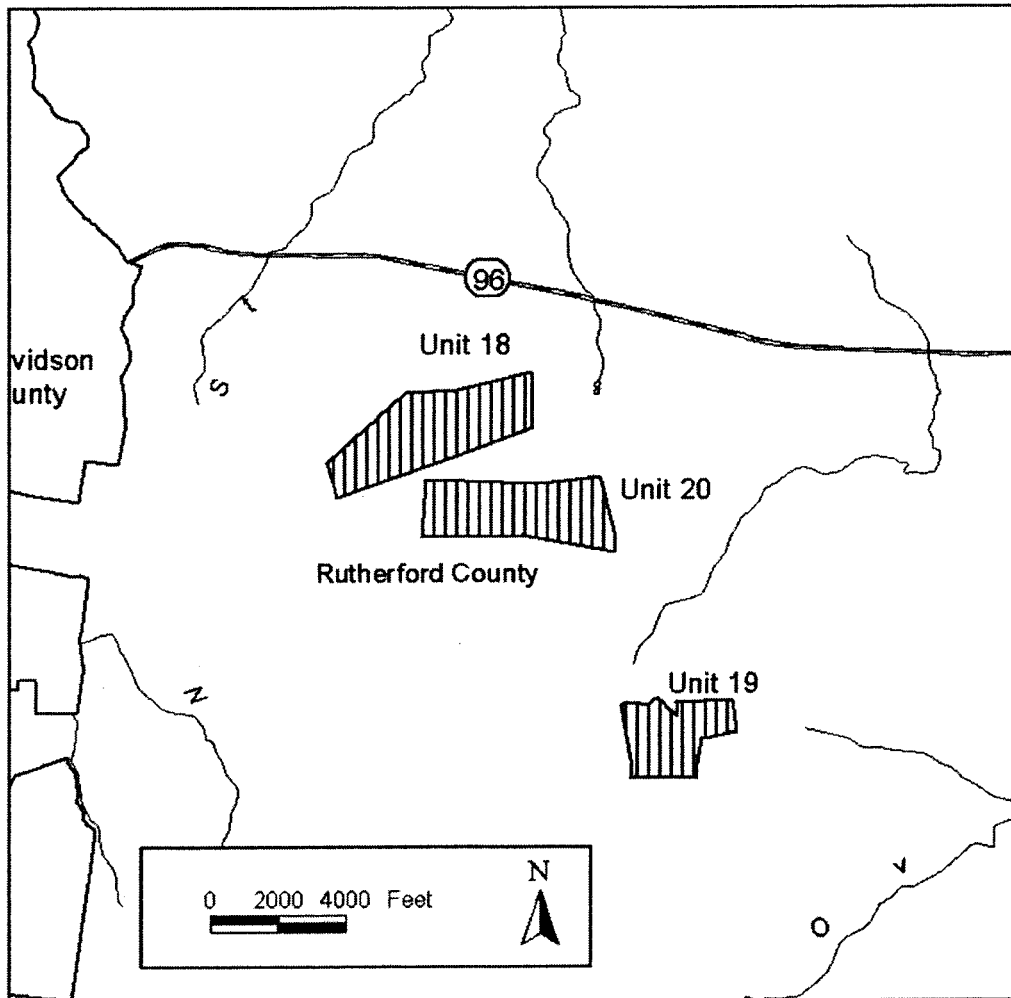
From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N):  
 1804332.94, 539670.12; 1805958.29, 539809.20; 1806144.40, 538804.21; 1805404.04, 538616.52; 1805093.00, 538606.55; 1804993.27, 537830.88; 1804984.80, 537416.39; 1803035.85, 537424.55; 1803073.16, 537763.87; 1802727.95, 539581.93; 1802926.61, 539663.11; 1803161.20, 539608.97;

1803341.75, 539609.00; 1803432.02, 539563.84; 1803585.87, 539636.20; 1803702.77, 539762.44; 1803829.05, 539789.45; 1804392.03, 539266.92.  
 (24) Unit 20: Indian Mountain, Rutherford County, Tennessee.  
 (i) From USGS 1:24,000 quadrangle Rockvale, Tennessee; land bounded by the following Tennessee State Plane / NAD83 (feet) coordinates (E,N):  
 1797048.41, 546270.92; 1800392.46, 546150.00; 1802111.40, 546443.12; 182532.04, 544775.34; 1802592.03,

544138.56; 1799853.77, 544635.03;  
1796909.24, 544584.61.

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

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



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

(25) Unit 21: Grandfather Mountain, Wilson County, Tennessee.

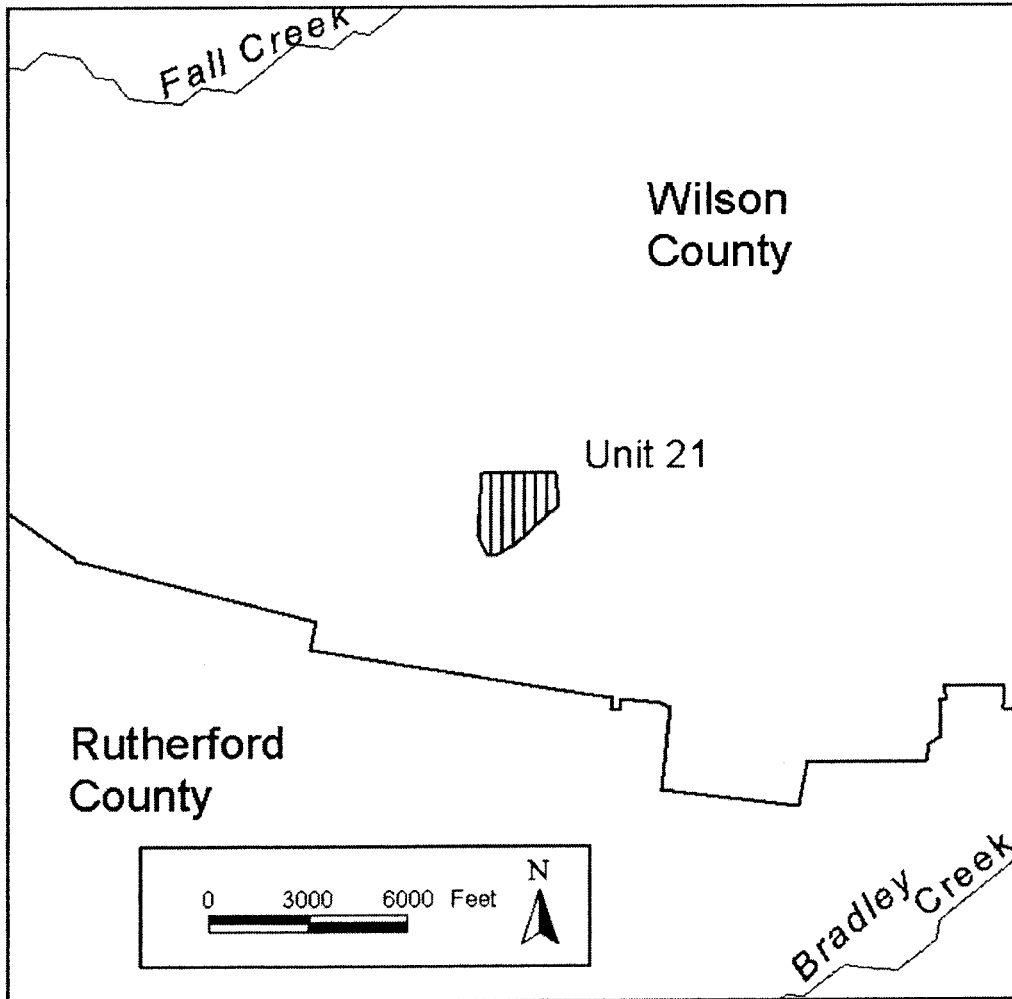
(i) From USGS 1:24,000 quadrangle Lascassas, Tennessee; land bounded by the following Tennessee State Plane /

NAD83 (feet) coordinates (E,N):  
1888463.64, 602182.29; 1890759.35,  
602182.29; 1890842.07, 601189.55;  
1889518.42, 599969.31; 1888877.28,

599638.40; 188670.46, 599638.40;  
1888401.59, 600300.23.

(ii) Map 10, Unit 21. Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

### Map 10 - Unit 21: critical habitat for Braun's rock-cress in Tennessee.



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

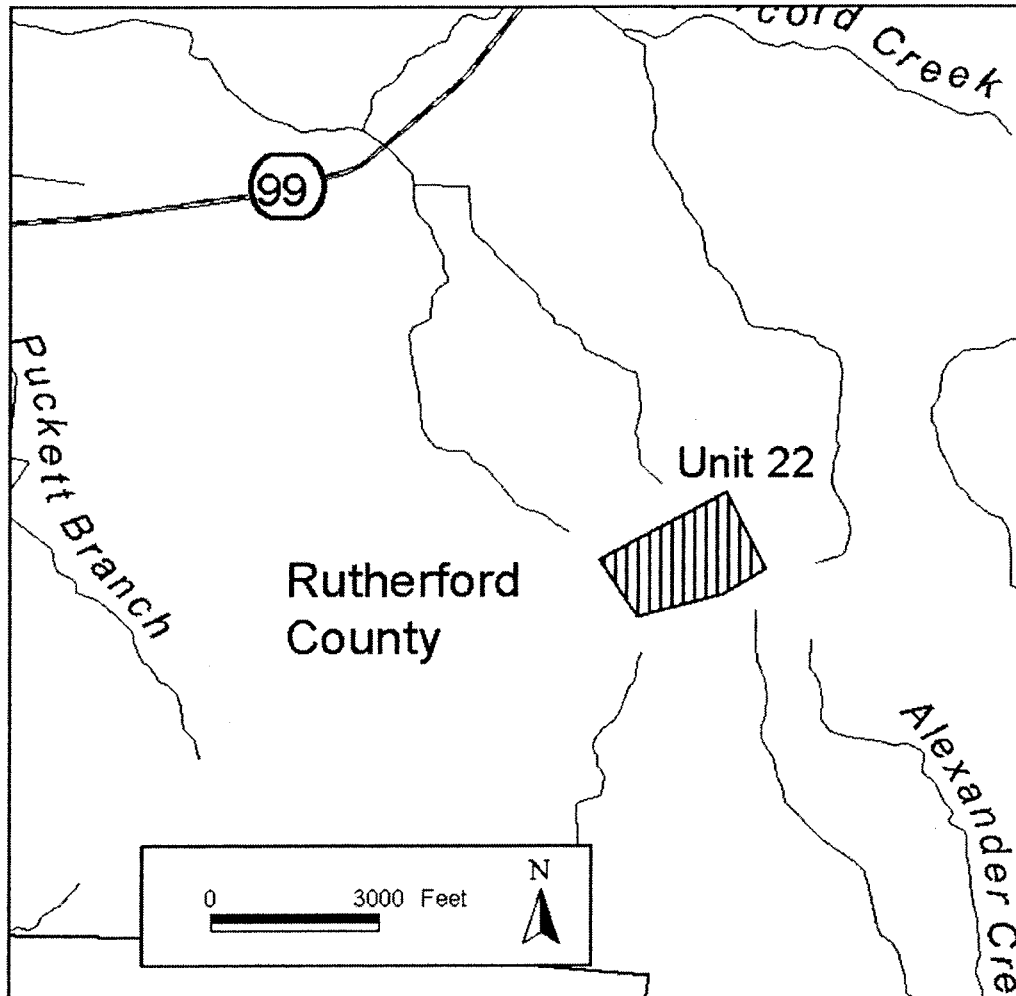
(26) Unit 22: Versailles Knob, Rutherford County, Tennessee.

(i) From USGS 1:24,000 quadrangle Rover, Tennessee; land bounded by the following Tennessee State Plane /

NAD83 (feet) coordinates (E,N):  
 1806361.65, 504515.38; 1808616.22,  
 505711.83; 1809308.27, 504327.51;  
 1808517.23, 503872.66; 1807034.03,  
 503477.14.

(ii) Map 11, Unit 22. Critical Habitat for the Braun's Rock-cress, Tennessee, follows:

## Map 11 - Unit 22: critical habitat for Braun's rock-cress in Tennessee.



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

Dated: January 16, 2004.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 04-1625 Filed 1-28-04; 8:45 am]

BILLING CODE 4310-55-C

### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 040105003-4003-01; I.D. 122203F]

RIN 0648-AR41

#### Fisheries of the Exclusive Economic Zone Off Alaska; General Limitations

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** NMFS proposes amending regulations establishing pollock Maximum Retainable Amounts (MRA) by adjusting the MRA enforcement period for pollock harvested in the Bering Sea and Aleutian Islands management area (BSAI) from enforcement at anytime during a fishing trip to enforcement at the time of offload. This action is necessary to reduce regulatory discards of pollock caught incidentally in the directed fisheries for non-pollock groundfish species. The intended effect of this action is to better utilize incidentally