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Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Gunnison Sage-Grouse; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0111; 4500030114]

RIN 1018–AX71

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Gunnison Sage-Grouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat for the Gunnison sage-grouse (*Centrocercus minimus*) under the Endangered Species Act of 1973, as amended (Act). If we finalize this rule as proposed, it would extend the Act's protections to this species' critical habitat. The effect of this regulation is to designate critical habitat for the Gunnison sage-grouse under the Act. In total, approximately 689,675 hectares (ha) (1,704,227 acres (ac)) are being proposed for designation as critical habitat in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah.

DATES: We will accept comments received or postmarked on or before March 12, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by February 25, 2013.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R6–ES–2011–0111, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2011–0111; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

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

The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this rulemaking and are available at *http://www.fws.gov/coloradoES/, http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, and at the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this rulemaking will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and/or at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

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

This rule proposes to designate critical habitat for the Gunnison sage-grouse.

- Based on our proposal to list the Gunnison sage-grouse as an endangered species, we are proposing critical habitat for the Gunnison sage-grouse under the Endangered Species Act. In total, approximately 689,675 hectares (ha) (1,704,227 acres (ac)) are being proposed for designation as critical habitat, in Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties in Colorado, and in Grand and San Juan Counties in Utah.

The basis for our action. The Act requires that the Service designate critical habitat at the time of listing to the extent prudent and determinable. We have determined that designation is prudent and critical habitat is determinable (see Background section below).

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

Information Requested

We intend to take any final action resulting from this proposed rule based on the best scientific and commercial data available and after consideration of economic, national security and other relevant impacts and will be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

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

(2) Specific information on:

(a) The amount and distribution of Gunnison sage-grouse habitat;

(b) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

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

(f) What areas not occupied at the time of listing (or the present time) are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Gunnison sage-grouse and proposed critical habitat.

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

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and particularly whether the benefits of potentially excluding any specific area outweigh the benefits of including that area as set out in section 4(b)(2) of the Act. For instance, should the proposed designation exclude properties currently enrolled in the Gunnison sage-grouse Candidate Conservation Agreement with Assurances, properties under conservation easement, or properties held by conservation organizations, and why?

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

(8) The likelihood of adverse social reactions to the designation of critical habitat and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

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 determination, as section 4(b)(2) of the Act directs that critical habitat designations be made based on the best scientific data available and after consideration of economic and other relevant impacts.

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

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. 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 *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

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

Previous Federal Actions

Elsewhere in today's **Federal Register**, we propose to list the Gunnison sage-grouse as an endangered species under the Endangered Species Act. Please see that proposed listing rule for a complete history of previous Federal actions.

On September 9, 2011, the U.S. District Court for the District of Columbia approved a settlement agreement laying out a multi-year listing work plan for addressing candidate species, including the Gunnison sage-grouse. As part of this agreement, the Service agreed to publish a proposed rule in the **Federal Register** on whether to list Gunnison sage-grouse and designate critical habitat by September 30, 2012. On August 13, 2012, the U.S. District Court for the District of Columbia modified the settlement agreement to extend this original deadline by 3 months, to December 30, 2012. The deadline for the final rule did not change and remains September 30, 2013. The request for an extension was made to allow more time to complete the proposed rule and more opportunity to engage with State and local governments, landowner groups, and other entities to discuss the conservation needs of the species. Accordingly, elsewhere in today's **Federal Register**, we propose to list the Gunnison sage-grouse as an endangered species under the Endangered Species Act.

Background

For more information on Gunnison sage-grouse taxonomy, life history, habitat, and population descriptions and our proposal to list the species as an endangered species under the Act please, refer to the 12-month finding published September 28, 2010 (75 FR 59804) and the proposed rule to list the species as an endangered species that is published elsewhere in today's **Federal Register**.

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

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

(a) Essential to the conservation of the species, and

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

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

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

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such

designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

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

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

Section 4(b) (2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available, as well as consideration of economic, national security and other relevant impacts. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

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

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

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

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

habitat is prudent for the Gunnison sage-grouse.

Critical Habitat Determinability

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

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

(ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

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

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

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

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

(3) Cover or shelter;

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

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

We derive the specific physical and biological features required for Gunnison sage-grouse from studies of this species' habitat, ecology, and life history as described above in the proposed listing rule and in greater detail in the 12-month finding published September 28, 2010 (75 FR 59804), and information presented below. We have determined that the following physical and biological features are essential for Gunnison sage-grouse:

Space for Individual and Population Growth and for Normal Behavior

Gunnison sage-grouse require large, interconnected expanses of sagebrush plant communities that contain healthy understory composed primarily of native, herbaceous vegetation (Patterson 1952, p. 9; Knick *et al.* 2003, p. 623; Connelly *et al.* 2004, pp. 4–15; Knick and Connelly 2011, entire; Pyke 2011, p. 532; Wisdom *et al.* 2011, entire). Gunnison sage-grouse may use a variety of habitats throughout their life cycle, such as riparian meadows, riparian areas with a shrub component, agricultural lands, and steppe dominated by native grasses and forbs. However, Gunnison sage-grouse are considered sagebrush obligates (Patterson 1952, p. 42; Braun *et al.* 1976, p. 168; Schroeder *et al.* 1999, pp. 4–5; Connelly *et al.* 2000a, pp. 970–972; Connelly *et al.* 2004, p. 4–1), and the use of non-sagebrush habitats by sage-grouse is dependent on the presence of sagebrush habitats in close proximity (Connelly *et al.* 2004, p. 4–18 and references therein).

Gunnison sage-grouse move seasonally among various habitat types driven by breeding activities, nest and brood-rearing site requirements, seasonal changes in the availability of food resources, and response to weather conditions. In the 2005 Gunnison sage-grouse Rangewide Conservation Plan (RCP), annual Gunnison sage-grouse habitat use was categorized into three seasons: (1) Breeding, (2) summer–late fall, and (3) winter (Gunnison Sage-grouse Rangewide Steering Committee (GSRSC 2005, pp. 27–31)). Sage-grouse exhibit strong site fidelity (loyalty to a particular area) to seasonal habitats, including breeding, nesting, brood-rearing, and wintering areas, even when a particular area may no longer be of value (Connelly *et al.* 2004, p. 3–1). Adult sage-grouse rarely switch inter-annual use among these seasonal habitats once they have been selected (Berry and Eng 1985, pp. 238–240; Fischer *et al.* 1993, p. 1039; Young 1994, pp. 42–43; Root 2002, p. 12; Holloran and Anderson 2005, p. 749), limiting the species' adaptability to habitat changes.

The pattern and scale of Gunnison sage-grouse annual movements, and the degree to which a given habitat patch can fulfill the species' annual habitat needs, are dependent on the arrangement and quality of habitats across the landscape. Habitat structure and quality vary spatially over the landscape; therefore, some areas may provide habitat for a single season, while other areas may provide habitat for one or more seasons (GSRSC 2005, pp. 25–26). In addition, plant community dynamics and disturbance also result in a temporal component of habitat variability. Rangewide, fine-scale habitat structure data on which to delineate seasonal habitats currently does not exist. A spatially explicit nest site selection model developed for the Gunnison Basin by Aldridge *et al.* (2011, pp. entire) predicted the location of the best Gunnison sage-grouse nesting habitat. The total area of the predicted best nesting habitat (containing greater than 90 percent of an independent sample of nest locations) amounted to approximately half of the study area (Aldridge *et al.* 2011, p. 7). However, this model does not predict Gunnison sage-grouse seasonal habitat needs outside of the nesting season.

Gunnison sage-grouse make relatively large movements on an annual basis. Maximum Gunnison sage-grouse annual movements in relation to lek capture have been reported as 18.5 km (11.5 mi) (GSRSC 2005, p. J–3), and 17.3 km (10.7 mi) (Saher 2011, pers. comm.), and individual Gunnison sage-grouse location points can be up to 27.9 km (17.3 mi) apart within a given year (Root 2002, pp. 14–15). Individual Gunnison sage-grouse have been documented to move more than 56.3 km (35 mi) to wintering areas in the Gunnison Basin in Colorado (Phillips 2011, pers. comm.). While it is likely that some areas encompassed within these movement boundaries are used only briefly as movement areas, the extent of these movements demonstrate the large-scale annual habitat requirements of the species.

Therefore, based on the species' year-round reliance on sagebrush and the various seasonal habitat requirements discussed above, we identify sagebrush plant communities of sufficient size and configuration to encompass all seasonal habitats, including areas used to move between seasonal habitats, for a given population of Gunnison sage-grouse to be a physical or biological feature essential to the conservation of this species.

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

Food resources used by Gunnison sage-grouse vary throughout the year because of seasonal changes in food availability and specific dietary requirements of breeding hens and

chicks. The diet of Gunnison sage-grouse is composed of nearly 100 percent sagebrush in the winter, while forbs, insects, and sagebrush are important dietary components during the remainder of the year (Wallestad *et al.* 1975, p. 21; Barnett and Crawford 1994, p. 117; Schroeder *et al.* 1999, p. 5; Young *et al.* 2000, p. 452).

Pre-laying hens are particularly dependent on forbs and the insects supported by native herbaceous understories (Drut *et al.* 1994, pp. 173–175). The Gunnison sage-grouse hen pre-laying period is from approximately late-March to early April. Pre-laying habitats for sage-grouse hens need to provide a diversity of vegetation including forbs that are rich in calcium, phosphorous, and protein to meet the nutritional needs of females during the egg development period (Barnett and Crawford 1994, p. 117; Connelly *et al.* 2000a, p. 970). During the pre-laying period, female sage-grouse select forbs that generally have higher amounts of calcium and crude protein than sagebrush (Barnett and Crawford 1994, p. 117).

Forbs and insects are essential nutritional components for sage-grouse chicks (Klebenow and Gray 1968, pp. 81–83; Peterson 1970, pp. 149–151; Johnson and Boyce 1991, p. 90; Connelly *et al.* 2004, p. 3–3). During the first 3 weeks after hatching, insects are the primary food of chicks (Patterson 1952, p. 201; Klebenow and Gray 1968, p. 81; Peterson 1970, pp. 150–151; Johnson and Boyce 1990, pp. 90–91; Johnson and Boyce 1991, p. 92; Drut *et al.* 1994, p. 93; Pyle and Crawford 1996, p. 320; Fischer *et al.* 1996a, p. 194). Diets of 4- to 8-week-old greater sage-grouse chicks were found to have more plant material as the chicks matured (Peterson 1970, p. 151). Succulent forbs are predominant in the diet until chicks exceed 3 months of age, at which time sagebrush becomes a major dietary component (Klebenow 1969, pp. 665–656; Connelly and Markham 1983, pp. 171–173; Fischer *et al.* 1996b, p. 871; Schroeder *et al.* 1999, p. 5).

Decreased availability of forbs corresponded to a decrease in the number of chicks per hen and brood size (Barnett and Crawford 1994, p. 117). Gunnison sage-grouse population dynamics appear to be most sensitive to female reproductive success and chick survival (GSRSC 2005, p. G–13). Therefore, habitats that support sagebrush vegetation as well as a vegetative understory composed of native grasses and forbs are essential to key demographic rates.

In most areas within the range of Gunnison sage-grouse, the herbaceous understory component of sagebrush plant communities typically dries out as summer progresses into fall. Habitats used by Gunnison sage-grouse in summer through late-fall are typically more mesic than surrounding habitats during this time of year (GSRSC 2005, p. 30). These areas are used primarily for foraging because they provide reliable sources of green, herbaceous vegetation when this resource is seasonally limited on the landscape. Specifically, these areas include: Riparian communities, springs, seeps, mesic meadows, or the margins of irrigated hay meadows and alfalfa fields (GSRSC 2005, p. 30). However, seasonal foraging habitats typically receive use by Gunnison sage-grouse only if they are within 50 m (165 ft.) of surrounding sagebrush plant communities (CSGWG 1997, p. 13).

In winter, greater and Gunnison sage-grouse diet is almost exclusively sagebrush (Rasmussen and Griner 1938, p. 855; Batterson and Morse 1948, p. 20; Patterson 1952, pp. 197–198; Wallestad *et al.* 1975, pp. 628–629; Young *et al.* 2000, p. 452). Various species of sagebrush can be consumed by sage-grouse (Remington and Braun 1985, pp. 1056–1057; Welch *et al.* 1988, p. 276, 1991; Myers 1992, p. 55). Habitats used by Gunnison sage-grouse during winter typically consist of 15 to 30 percent sagebrush cover, similar to those used by greater sage-grouse (Connelly *et al.* 2000a, p. 972; Young *et al.* 2000, p. 451). However, Gunnison sage-grouse may also use areas with more deciduous, non-sagebrush shrubs during the winter (Young *et al.* 2000, p. 451). In all suitable winter habitats, the height of sagebrush must be tall enough so that leaves are still exposed when wintering areas are largely covered with snow.

Based on the information above, we identify sagebrush plant communities that contain herbaceous vegetation consisting of a diversity and abundance of forbs, insects, and grasses, that fulfill all Gunnison sage-grouse seasonal dietary requirements, to be a physical or biological feature essential to the conservation of this species. We also identify as such features non-sagebrush habitats located adjacent to sagebrush plant communities that are used by Gunnison sage-grouse for foraging during seasonally dry periods. These habitats are generally more mesic than surrounding habitat, and include wet meadows, riparian areas, and irrigated pastures.

Cover or Shelter

Predation is the most commonly identified cause of direct mortality for sage-grouse during all life stages, and Gunnison sage-grouse require sagebrush and herbaceous vegetation yearlong for escape and hiding cover (Schroeder *et al.* 1999, p. 9; Connelly *et al.* 2000b, p. 228; GSGRC 2005, p. 138; Connelly *et al.* 2011, p. 66). Major predators of adult sage-grouse include many species including golden eagles (*Aquila chrysaetos*), red foxes (*Vulpes fulva*), and bobcats (*Felis rufus*) (Hartzler 1974, pp. 532–536; Schroeder *et al.* 1999, pp. 10–11; Schroeder and Baydack 2001, p. 25; Rowland and Wisdom 2002, p. 14; Hagen 2011, p. 97). Most raptor predation of sage-grouse is on juveniles and older age classes (GSRSC 2005, p. 135). Juvenile sage-grouse also are killed by common ravens (*Corvus corax*), badgers (*Taxidea taxus*), red foxes, coyotes (*Canis latrans*) and weasels (*Mustela* spp.) (Braun 1995, entire; Schroeder *et al.* 1999, p. 10). Nest predators include badgers, weasels, coyotes, common ravens, American crows (*Corvus brachyrhyncos*) and magpies (*Pica* spp.), elk (*Cervus canadensis*) (Holloran and Anderson 2003, p. 309), and domestic cows (*Bovus* spp.) (Coates *et al.* 2008, pp. 425–426). Ground squirrels (*Spermophilus* spp.) also have been identified as nest predators (Patterson 1952, p. 107; Schroeder *et al.* 1999, p. 10; Schroder and Baydack 2001, p. 25), but recent data show that they are physically incapable of puncturing eggs (Holloran and Anderson 2003, p. 309; Coates *et al.* 2008, p. 426; Hagen 2011, p. 97). Young (1994, p. 37) found the most common predators of Gunnison sage-grouse eggs were weasels, coyotes, and corvids.

Nest predation appears to be related to the amount of herbaceous cover surrounding the nest (Gregg *et al.* 1994, p. 164; Braun 1995, pp. 1–2; DeLong *et al.* 1995, p. 90; Braun 1998; Coggins 1998, p. 30; Connelly *et al.* 2000b, p. 975; Schroeder and Baydack 2001, p. 25; Coates and Delehanty 2008, p. 636). Females actively select nest sites with the presence of big sagebrush and grass and forb cover (Connelly *et al.* 2000, p. 971), and nesting success of greater sage-grouse is positively correlated with these qualities (Schroeder and Baydack 2001, p. 25; Hagen *et al.* 2007, p. 46). Likewise, reduced herbaceous cover for young chicks can increase their rate of predation (Schroeder and Baydack 2001, p. 27), and high shrub canopy cover at nest sites was related to lower levels of predation by visual predators, such as the common raven (Coates 2007, p. 148). However, herbaceous cover may not be effective in deterring olfactory predators such as badgers (Coates 2007, p. 149).

Gunnison sage-grouse nearly exclusively use sagebrush plant communities during the winter season

for thermal cover and to meet nutritional needs. Sagebrush stand selection in winter is influenced by snow depth (Patterson 1952, pp. 188–189; Connelly 1982 as cited in Connelly *et al.* 2000a, p. 980) and in some areas, topography (Beck 1977, p. 22; Crawford *et al.* 2004, p. 5). Winter sagebrush use areas are associated with drainages, ridges, or southwest aspects with slopes less than 15 percent (Beck 1977, p. 22). Lower flat areas and shorter sagebrush along ridge tops provide roosting areas. In extreme winter conditions, greater sage-grouse will spend nights and portions of the day burrowed into ''snow burrows'' (Back *et al.* 1987, p. 488), and we expect Gunnison sage-grouse to exhibit the same behavior. Hupp and Braun (1989, p. 825) found that most Gunnison sage-grouse feeding activity in the winter occurred in drainages and on slopes with south or west aspects in the Gunnison Basin. During a severe winter in the Gunnison Basin in 1984, less than 10 percent of the sagebrush was exposed above the snow and available to sage-grouse (Hupp, 1987, pp. 45–46). In these conditions, the tall and vigorous sagebrush typical in drainages was an especially important food source.

Therefore, based on the information above, we identify sagebrush plant communities consisting of adequate shrub and herbaceous structure to provide year-round escape and hiding cover, as well as areas that provide concealment of nests and broods during the breeding season, and winter season thermal cover to be a physical or biological feature essential to the conservation of this species. Quantitative information on cover can be found in the Primary Constituent Elements for Gunnison Sage-Grouse section below.

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

Lek Sites—Lek sites (communal breeding areas) can be located on areas of bare soil, wind-swept ridges, exposed knolls, low sagebrush, meadows, and other relatively open sites with good visibility and low vegetation structure (Connelly *et al.* 1981, pp. 153–154; Gates 1985, pp. 219–221; Klott and Lindzey 1989, pp. 276–277; Connelly *et al.* 2004, p. 3–7 and references therein). In addition, leks are usually located on flat to gently sloping areas of less than 15 percent grade (Patterson 1952, p. 83; Giezentanner and Clark 1974, p. 218; Wallestad 1975, p. 17; Autenrieth 1981, p. 13). Leks are often surrounded by denser shrub-steppe cover, which is used for escape, and thermal and feeding cover. Leks can be formed opportunistically at any appropriate site within or adjacent to nesting habitat (Connelly *et al.* 2000a, p. 970). Lek habitat availability is not considered to be a limiting factor for sage-grouse (Schroeder 1997, p. 939). However, adult male sage-grouse demonstrate strong yearly fidelity to lek sites (Patterson 1952, p. 91; Dalke 1963 *et al.,* pp. 817–818), and some Gunnison sage-grouse leks have been used since the 1950s (Rogers 1964, pp. 35–40).

Nesting Habitat—Gunnison sage-grouse typically select nest sites under sagebrush cover with some forb and grass cover (Young 1994, p. 38), and successful nests were found in higher shrub density and greater forb and grass cover than unsuccessful nests (Young 1994, p. 39). The understory of productive sage-grouse nesting areas contains native grasses and forbs, with horizontal and vertical structural diversity that provides an insect prey base, herbaceous forage for pre-laying and nesting hens, and cover for the hen while she is incubating (Schroeder *et al.* 1999, p. 11; Connelly *et al.* 2000a, p. 971; Connelly *et al.* 2004, pp. 4–5—4–8). Shrub canopy and grass cover provide concealment for sage-grouse nests and young and are critical for reproductive success (Barnett and Crawford 1994, pp. 116–117; Gregg *et al.* 1994, pp. 164–165; DeLong *et al.* 1995, pp. 90–91; Connelly *et al.* 2004, p. 4–4). Few herbaceous plants are growing in April when nesting begins, so residual herbaceous cover from the previous growing season is critical for nest concealment in most areas (Connelly *et al.* 2000a, p. 977).

Nesting success for Gunnison sage-grouse is highest in areas where forb and grass covers are found below a sagebrush canopy cover of 15 to 30 percent (Young *et al.* 2000, p. 451). These numbers are comparable to those reported for the greater sage-grouse (Connelly *et al.* 2000a, p. 971). Nest success for greater sage-grouse is greatest where grass cover is present (Connelly *et al.* 2000a, p. 971). Because of the similarities between these two species, we believe that increased nest success in areas of forb and grass cover below the appropriate sagebrush canopy cover is likely the case for Gunnison sage-grouse as well.

Female Gunnison sage-grouse exhibit strong fidelity to nesting locations (Young 1994, p. 42; Lyon 2000, p. 20; Connelly *et al.* 2004, p. 4–5; Holloran and Anderson 2005, p. 747). The degree of fidelity to a specific nesting area appears to diminish if the female's first nest attempt in that area was unsuccessful (Young 1994, p. 42). However, movement to new nesting areas does not necessarily result in increased nesting success (Connelly *et al.* 2004, p. 3–6; Holloran and Anderson 2005, p. 748).

Brood-rearing Habitat—Early brood-rearing habitat is found close to nest sites (Connelly *et al.* 2000a, p. 971), although individual females with broods may move large distances (Connelly 1982, as cited in Connelly *et al.* 2000a, p. 971). Young (1994, pp. 41–42) found that Gunnison sage-grouse with broods used areas with lower slopes than nesting areas, high grass and forb cover, and relatively low sagebrush cover and density. Broods frequently used the edges of hay meadows, but were often flushed from areas found in interfaces of wet meadows and habitats providing more cover, such as sagebrush or willow-alder (*Salix-Alnus*). By late summer and into the early fall, the birds move from riparian areas to mesic sagebrush plant communities that continue to provide green forbs. During this period, Gunnison sage-grouse can be observed in atypical habitat such as agricultural fields (Commons 1997, pp. 79–81). However, broods in the Gunnison Basin typically do not use hay meadows further away than 50 m (165 ft) from the edge of adjacent sagebrush stands (CSGWG 1997, p. 13).

Therefore, based on the information above, we identify sagebrush plant communities with the appropriate shrub and herbaceous vegetation structure to meet all the needs for all Gunnison sage-grouse reproductive activities (including lekking, nesting, and brood-rearing) to be a physical or biological feature essential to the conservation of this species.

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

Gunnison sage-grouse historically occurred in southwestern Colorado, northwestern New Mexico, northeastern Arizona, and southeastern Utah (Schroeder *et al.* 2004, pp. 370–371). The maximum Gunnison sage-grouse historical (presettlement) range is estimated to have been approximately 5,534,805 ha (13,676,800 ac) (GSRSC 2005, p. 32); however, only a portion of the historical range would have been occupied at any one time. The current occupied range of Gunnison sage-grouse is approximately 379,464 ha (937,676 ac) in southwestern Colorado and southeastern Utah (CDOW 2009b, p. 1; GSRSC 2005, p. 81). The estimated 93 percent of sagebrush habitat within the presettlement range of the Gunnison sage-grouse had been lost prior to 1960. The majority of the remaining habitat is

highly fragmented, although to a lesser extent in the Gunnison Basin than in the remainder of the species' range.

The occupied sagebrush plant communities that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the Gunnison sage-grouse. The unoccupied sagebrush plant communities that are proposed for designation were all likely historically occupied (GSRSC 2005, pp. 32–33) and can allow for the expansion of the current geographic distribution of the species as well as facilitate movements among populations. The extremely limited extent of sagebrush habitat throughout the current range of the species, but especially in the six smaller populations (see the Background section of our proposed listing rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**), is a significant factor in causing us to propose areas beyond those that are currently occupied for critical habitat designation.

Primary Constituent Elements for Gunnison Sage-Grouse

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Gunnison sage-grouse in areas occupied at the time of listing, focusing on the features' primary constituent elements (PCEs). We consider primary constituent elements to be the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

We only consider those areas as critical habitat if they meet the ''Landscape-scale Primary Constituent Element'' (PCE 1) because small, isolated patches of sagebrush do not support Gunnison sage-grouse. If an area meets the landscape scale requirement, then a particular site is considered critical habitat if it contains one or more of the ''Site-scale Primary Constituent Elements'' (PCEs 2–5).

For the ''Site-scale Primary Constituent Elements'' (PCEs 2–5), we adopt the values from the 2005 RCP (GSRSC 2005, Appendix H and references therein). The 2005 RCP provides structural habitat values developed using only Gunnison sage-grouse habitat use data from various Gunnison sage-grouse populations in all seasonal habitats (GSRSC 2005, p. H–2). Source data includes structural vegetation data collected in the breeding season (Young 1994, Apa 2004), summer-fall (Young 1994, Woods and Braun 1995, Commons 1997, Apa 2004), and winter (Hupp 1987). In addition, these structural habitat values are specific to the Colorado Plateau floristic province and reflect the understory structure and composition specific to the range of Gunnison sage-grouse (GSRSC 2005, p. H–2). As such, these values are based on the most current and comprehensive, rangewide assessment of Gunnison sage-grouse habitat structure. We consider an area critical habitat if its average vegetation values are within the values for the majority of structural categories for any given PCE (Tables 1 and 2).

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Gunnison sage-grouse are:

Landscape-Scale Primary Constituent Element

Primary Constituent Element 1—Areas with vegetation composed primarily of sagebrush plant communities (at least 25 percent of primarily sagebrush land cover within a 1.5-km (0.9-mi) radius of any given location), of sufficient size and configuration to encompass all seasonal habitats for a given population of Gunnison sage-grouse, and facilitate movements within and among populations.

Site-Scale Primary Constituent Elements

Primary Constituent Element 2—Breeding habitat composed of sagebrush plant communities with structural characteristics within the ranges described in Table 1, below. Habitat structure values are average values over a project area.

TABLE 1—GUNNISON SAGE-GROUSE STRUCTURAL GUIDELINES FOR BREEDING HABITAT.

Vegetation variable	Amount of occurrence in the habitat
Sagebrush Canopy Cover	10–25 percent
Non-sagebrush Canopy Cover.	5–15 percent
Total Shrub Canopy Cover	15–40 percent
Sagebrush Height	25–50 cm. (9.8–19.7 in).
Grass Cover	10–40 percent
Forb Cover	5–40 percent
Grass Height	10–15 cm. (3.9–5.9 in).
Forb Height	5–15 cm (2.0–5.9 in)

Primary Constituent Element 3—Summer-late fall habitat composed of sagebrush plant communities with structural characteristics within the ranges described in Table 2, below. Habitat structure values are average values over a project area.

TABLE 2—GUNNISON SAGE-GROUSE STRUCTURAL GUIDELINES FOR SUMMER-LATE FALL HABITAT.

Vegetation variable	Amount of occurrence in the habitat
Sagebrush Canopy Cover.	5–20 percent
Non-sagebrush Canopy Cover.	5–15 percent
Total Shrub Canopy Cover.	10–35 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–35 percent
Forb Cover	5–35 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	3–10 cm (1.2–3.9 in)

Primary Constituent Element 4—Winter habitat composed of sagebrush plant communities with sagebrush canopy cover between 30 to 40 percent and sagebrush height of 40 to 55 cm (15.8 to 21.7 in). These habitat structure values are average values over a project area.

Primary Constituent Element 5—Alternative, mesic habitats used primarily in the summer-late fall season.

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. All areas proposed for designation as critical habitat as described below may require some level of management to address the current and future threats to the physical and biological features essential to the conservation of Gunnison sage-grouse. In all of the described units, special management

may be required to ensure that the habitat is able to provide for the biological needs of the species.

A detailed discussion of the current and foreseeable threats to Gunnison sage-grouse can found in the proposed listing rule to list the species as endangered, which is published elsewhere in today's **Federal Register**, in the section entitled *Summary of Factors Affecting the Species.* In general, the features essential to the conservation of Gunnison sage-grouse may require special management considerations or protection to reduce the following individual threats and their interactions: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators; improper grazing management, the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and other activities that result in the loss or degradation of sagebrush plant communities. The largest, overarching threat to Gunnison sage-grouse is habitat fragmentation. The aforementioned activities will require special management consideration not only for the direct effects of the activities on the birds' habitat and behavior, but also for their indirect effects and how they are cumulatively and individually increasing habitat fragmentation.

Special management considerations or protection may be required within areas we are proposing as critical habitat to address these threats. Based on our analysis of threats to Gunnison sage-grouse, management activities that could ameliorate these threats include, but are not limited to: Comprehensive land-use planning and implementation that prevents a net decrease in the extent and quality of Gunnison sage-grouse habitat through the prioritization and protection of habitats and monitoring; protection of lands by fee title acquisition or the establishment of permanent conservation easements; management of recreational use to minimize direct disturbance and habitat loss; invasive weed and invasive native plant species control activities; management of domestic and wild ungulate use so that overall habitat meets or exceeds Gunnison sage-grouse structural habitat guidelines; monitoring and management of predator communities; coordinated and monitored habitat restoration or improvement projects; and implementation of wild fire suppression, particularly in Wyoming big sagebrush plant associations. In some cases, continuing ongoing land management practices may be appropriate and beneficial for Gunnison sage-grouse. For instance, continued irrigation and maintenance of hay and alfalfa fields on private lands near sagebrush habitats may help provide or enhance brood-rearing, mesic habitats for Gunnison sage-grouse. The Service acknowledges the ongoing and proposed conservation efforts of all entities across the range of the Gunnison sage-grouse, such as the Sage Grouse Initiative that is led by the Natural Resources Conservation Service and incorporates many partners to implement conservation actions. The Service is conferencing with Federal agencies to insure a seamless continuation of conservation practices if the species is listed and critical habitat is designated.

Such special management activities may be required to protect the physical and biological features and support the conservation of the species by preventing or reducing the loss, degradation, and fragmentation of sagebrush landscapes. Additionally, management of critical habitat lands can increase the amount of suitable habitat and enhance connectivity among Gunnison sage-grouse populations through the restoration of areas that were previously composed of sagebrush plant communities. The limited extent of sagebrush habitats throughout the species' current range emphasizes the need for additional habitat for the species to be able to expand into, as well as adjust to changes in habitat availability that may result from climate change, along with habitat needed to survive and recover.

Criteria Used To Identify Proposed Critical Habitat

As required by section 4(b)(2) of the Act, we used the best scientific data available to propose critical habitat. We reviewed available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. As a result of this analysis we are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing (or at the current time), and areas that were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

We based our identification of lands that contain features essential to the conservation of Gunnison sage-grouse on polygons delineated and defined by Colorado Parks and Wildlife (CPW) and the Utah Division of Wildlife Resources (UDWR) the CPW and UDWR as part of the 2005 RCP Habitat Mapping project (GSRSC 2005, p. 54). Gunnison sage-grouse polygons mapped in the 2005 RCP were derived from a combination of telemetry locations, sightings of sage-grouse or sage-grouse sign, local biological expertise, GIS analysis, or other data sources (GSRSC 2005, p. 54; CDOW 2009e, p. 1). We consider polygons designated as ''occupied habitat'' (GSRSC 2005, p. 54) to be the area occupied by Gunnison sage-grouse at the time of the listing (or at the current time). No males have been observed since 2002 on the Sims Mesa lek, which is located in the Sims Mesa portion of the Cimarron-Cerro Summit-Sims Mesa population, (see the Background section of our proposed listing rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**), and it is likely that this subpopulation has been extirpated (CDOW 2009b, p. 43). However, this lek has been inactive for less than ten years and is not officially designated as historic according to CPW standards (CDOW 2009d, p. 7). Therefore, we consider this area to be currently occupied in this proposal.

The 2005 RCP also defined two other habitat categories, ''potential habitat,'' and ''vacant or unknown habitat'' (GSRSC 2005, p. 54). Potential habitat is defined as ''unoccupied habitats that could be suitable for occupation of sage-grouse if practical restoration were applied,'' and is most commonly former sagebrush areas overtaken by piñon-juniper woodlands. The vacant or unknown habitat category is defined as ''suitable habitat for sage-grouse that is separated (not contiguous) from occupied habitats that either (1) has not been adequately inventoried, or (2) has not had documentation of grouse presence in the past 10 years.'' These vacant or unknown areas include habitats that contain features essential for the conservation of the species and are currently considered suitable for use by Gunnison sage-grouse or areas where ecological site potential suggest that sagebrush plant associations could occur if practical restoration were applied. The latter situation is most commonly in areas where piñon-juniper

vegetation has expanded from presettlement distributions.

Because we lack the detailed habitat data throughout the range of the species, we used the ''potential'' and ''vacant or unknown'' habitat polygons as the first criteria for our determination of unoccupied areas that contain features essential for the conservation of Gunnison sage-grouse. We further refined our determination of which unoccupied areas should be designated as critical habitat based on: (1) Adjacency or proximity to currently occupied habitat; (2) ability to provide for connectivity between and within populations; and (3) size of area of vegetation composed primarily of sagebrush plant communities. We limited our consideration of unoccupied areas to those within the potential presettlement habitat of Gunnison sage-grouse as mapped by Schroeder *et al.* in 2004 and modified in Colorado in the 2005 RCP. We considered unoccupied areas as proposed critical habitat if they are located within approximately 18.5 km (11.5 mi) of occupied habitat based on typical sage-grouse movement distances (Connelly 2000, p. 978; GSRSC 2005, p. J–5) because these areas have the highest likelihood of receiving Gunnison sage-grouse use and potential for occupied habitat expansion. In addition, Knick and Hanser (2011, p. 404) believe that isolated patches of suitable habitats within 18 km (11.2 mi) could provide connectivity among populations. We lack information on how sage-grouse move through landscapes (Knick and Hanser 2011, p. 402). Therefore, we evaluated connectivity potential by visual identification of areas that support a high proportion of sagebrush or shrub cover located along the shortest path between occupied population areas and areas located between occupied subpopulations.

Sage-grouse population persistence or extirpation is associated with the amount of sagebrush habitat at large spatial scales (Knick and Connelly 2011, entire). Aldridge *et al.* (2008, pp. 989–990) reported that at least 25 percent sagebrush cover within a 30 km (18.6 mi) radius scale was needed for long-term sage-grouse persistence, whereas Wisdom *et al.* (2011, pp. 465–467) showed that areas with at least 27 percent sagebrush cover within a 18 km (11.2 mi) radius scale had a higher probability of population persistence. No particular spatial scale has been determined to best evaluate sage-grouse suitability. Therefore, we evaluated the ability of unoccupied areas to potentially provide for the landscape-scale habitat needs of Gunnison sage-grouse by identifying areas of large size with a high degree of sagebrush cover at several spatial scales. We used moving windows (ESRI ''Neighborhood analysis'' Tool) applied to sagebrush landcover types isolated from the SWReGAP land cover raster dataset (USGS 2004, entire). We visually assessed the amount of sagebrush at 54 km, 18 km, 5 km, and 1.5 km radii scales (33.6 mi, 11.2 mi, 3.1 mi, and 0.9 mi, respectively) to locate areas where the landscape is dominated by sagebrush land cover.

The application of a linear model presented in the 2005 RCP that analyzed the relationship between the mean high count of males on leks and the amount of available habitat of ''average quality'' in each Gunnison sage-grouse population (GSRSC 2005, p. 197) predicts a habitat area in excess of 100,000 acres is needed to support a population of 500 birds. In the absence of habitat loss, inbreeding depression, and disease, population viability modeling for Gunnison sage-grouse predicted that individual populations greater than 500 birds may be viable (have a low probability of extinction) over a 50-year time period (GSRSC 2005, p. 170). These data suggest that an individual habitat patch, or the cumulative area of two or more smaller habitat patches in close proximity, may need to be in excess of 40,469 ha (100,000 ac) to support a viable population of Gunnison sage-grouse. This model does not take into account the inherent variance in habitat structure and quality over the landscape, and detailed habitat structure and quality data are lacking. As a result we consider the estimated minimum habitat area to be an approximate value.

As described in more detail in the proposed listing rule for the Gunnison sage-grouse, which is published elsewhere in today's **Federal Register**, there are currently seven populations of this species: (1) Monticello-Dove Creek; (2) Piñon Mesa; (3) San Miguel Basin; (4) Cerro Summit-Cimarron-Sims Mesa; (5) Crawford; (6) Gunnison Basin; and (7) Poncha Pass. The currently occupied habitat area for four of these populations,the currently occupied habitat area for the Piñon Mesa, Cerro Summit-Cimarron-Sims Mesa, Crawford, and Poncha Pass populations, which range in size from 8,262 (ha) (20,415 ac) to 15,744 ha (38,904 ac), are thus smaller than the model's predicted minimum required area. The currently occupied habitat area in two other populations, the Monticello-Dove Creek and the San Miguel Basin populations is 45,275 ha (111,877 ac) and 41,022 ha (101,368 ac), respectively. These areas only slightly exceed the model predicted minimum required area. While correlative in nature, altogether, these data suggest that the currently occupied habitat area for four populations is insufficient for long-term population viability, and may be minimally adequate for two populations.

With the exception of the Gunnison Basin population area, proposed critical habitat units (CHUs) for Gunnison sage-grouse collectively contain relatively small, and in some cases, isolated, populations of the species. Thus, we believe all currently occupied areas, as well as some currently unoccupied areas, proposed as critical habitat are essential for the persistence and conservation of the Gunnison sage-grouse and help to meet the landscape-scale habitat criteria set forth above. The best available information indicates that, with proper protection and management, the proposed CHUs are sufficient to provide for the conservation of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other man-made structures because such lands lack physical and biological features necessary for Gunnison sage-grouse. 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 sites. 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 and biological features in the adjacent critical habitat.

We are proposing for designation as critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the species. We are also proposing lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of Gunnison sage-grouse.

Units were proposed for designation based on sufficient elements of physical

and biological features being present to support Gunnison sage-grouse life-history processes. All units individually contain all of the identified elements of physical and biological features, and each unit as a whole supports multiple life-history processes.

The 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 in the rule portion. 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 *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, on our Internet sites [*http://www.fws.gov/coloradoes/*], and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing seven units as critical habitat for Gunnison sage-grouse. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for Gunnison sage-grouse. The seven units we propose as critical habitat correspond to the seven Gunnison sage-grouse populations, which include: (1) Monticello-Dove Creek, (2) Piñon Mesa (3) San Miguel Basin, (4) Cerro Summit-Cimarron-Sims Mesa, (5) Crawford, (6) Gunnison Basin, and (7) Poncha Pass. For the Cerro Summit-Cimarron-Sims Mesa, Crawford, and Poncha Pass Units, our designation includes all available habitat to the species. We consider approximately 55 percent of the area within the seven units as currently occupied and 45 percent as currently unoccupied. Table 3 shows the occupancy status of each individual unit. Table 4 shows the generalized ownership within each unit.

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TABLE 3. Size and current occupancy status of Gunnison sage-grouse proposed critical habitat units. [Area estimates reflect all land within critical habitat unit boundaries.]

Unit Name	Acres	Hectares	Percent of All Units	Occupied?	Acres	Hectares	Percent of Individual Unit	Percent of All Units
Monticello-Dove Creek	348,353	140,973	20.4	Yes	111,945	45,303	32.1	6.6
				No	236,408	95,671	67.9	13.9
Piñon Mesa	245,179	99,220	14.4	Yes	38,905	15,744	15.9	2.3
				No	206,274	83,476	84.1	12.1
San Miguel Basin	165,769	67,084	9.7	Yes	101,371	41,023	61.2	5.9
				No	64,398	26,061	38.8	3.8
Cerro Summit-Cimarron-Sims Mesa	62,708	25,377	3.7	Yes	37,161	15,038	59.3	2.2
				No	25,547	10,339	40.7	1.5
Crawford	97,123	39,304	5.7	Yes	35,015	14,170	36.1	2.1
				No	62,108	25,134	63.9	3.6
Gunnison Basin	736,802	298,173	43.2	Yes	592,952	239,959	80.5	34.8
				No	143,850	58,214	19.5	8.4
Poncha Pass	48,292	19,543	2.8	Yes	20,416	8,262	42.3	1.2
				No	27,877	11,281	57.7	1.6
Totals	1,704,227	689,675	100.0		1,704,227	689,675	100.0	100.0

Note: Area sizes may not sum due to rounding.

TABLE 4. Occupancy status and grouped ownership of Gunnison sage-grouse proposed critical habitat units. [Area estimates reflect all land within critical habitat unit boundaries.]

		Federal			State			City and County			Private		
Population	Occupied?	Acres	Hectares	Percent	Acres	Hectares	Percent	Acres	Hectares	Percent	Acres	Hectares	Percent
Monticello-	Yes	7,958	3,221	7.1	3,285	1,329	2.9				100,702	40,753	90.0
Dove	No	36,084	14,603	15.3	5	2	0.0				200,318	81,066	84.7
Piñon	Yes	11,622	4,703	29.9							27,283	11,041	70.1
Mesa	No	141,926	57,435	68.8	73	30	0.0				64,275	26,011	31.2
San	Yes	37,282	15,087	36.8	14,598	5,908	14.4				49,492	20,029	48.8
Miguel	No	18,555	7,509	28.8							45,843	18,552	71.2
Cerro	Yes	4,876	1,973	13.1	4,066	1,645	10.9				28,218	11,420	75.9
Summit-	No	5,430	2,198	21.3							20,117	8,141	78.7
Crawford	Yes	26,534	10,738	75.2							8,481	3,432	24.0
	No	17,557	7,105	28.7							44,552	18,029	72.1
Gunnison	Yes	399,829	161,805	67.4	14,541	5,885	2.5	52	21	0.0	178,531	72,249	30.1
Basin	No	86,823	35,136	60.4	414	167	0.3				56,614	22,911	39.4
Poncha	Yes	15,144	6,128	74.2	479	194	2.3				4,792	1,939	23.5
Pass	No	15,143	6,128	54.3	1,605	650	5.8				11,128	4,504	39.9
Totals		824,765	333,770	48.4	39,066	15,810	2.3	52	21	0.0	840,345	340,075	49.3

Note: Area sizes may not sum due to rounding.

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We present below a general description for all of the proposed units, followed by brief descriptions of each individual unit, and reasons why they meet the definition of critical habitat for Gunnison sage-grouse.

Unit Descriptions

All units were likely historically occupied by Gunnison sage-grouse. As discussed above, we believe that all lands proposed as critical habitat are essential to the conservation of the Gunnison sage-grouse for the following reasons:

(1) The loss of sagebrush habitats within the potential presettlement range of Gunnison sage-grouse is associated with a substantial reduction in the species range.

(2) Population estimates and population trends for six of seven Gunnison sage-grouse populations (with the exception of the Gunnison Basin population) are declining (CDOW 2010a, pp. 1–3). These populations are currently geographically isolated and may have an effective population size small enough to induce inbreeding depression (as discussed under Factor E of our proposed rule to list the Gunnison sage-grouse as endangered, which is published elsewhere in today's **Federal Register**) and loss of adaptive potential, with the assumption that these populations are exhibiting similar demography to the San Miguel population because we only have detailed demography information for this population (Stiver *et al.* 2008, p. 479).

(3) Existing small populations are at higher risk of extirpation due to stochastic events.

(4) Currently occupied habitat area for six of the seven populations (with the exception of the Gunnison Basin population) may be less than the minimum amount of habitat necessary for the long-term viability of each population.

Designation of critical habitat limited to the Gunnison sage-grouse's present range would be inadequate to ensure the conservation of the species. We are proposing areas historically occupied, but not known to be currently occupied, for the following reasons:

(1) Current population sizes of the six smaller Gunnison sage-grouse populations are at such low levels, they must increase in order to ensure long-term survival (GSRSC 2005, p. G–22). While the occupied portions of the proposed units provide habitat for current populations, currently unoccupied areas will provide habitat for population expansion either through natural means, or by reintroduction, thus reducing threats due to naturally occurring events.

(2) Population expansion either through natural means or by reintroduction into the units is necessary to increase the long-term viability and decrease the risk of extirpation of the populations through stochastic events, such as fires or drought, as the current, isolated populations are each at high risk of extirpation from such stochastic events (GSRSC 2005, p. G–22), particularly because of their small sizes and restricted ranges.

(3) Unoccupied portions of units decrease the geographic isolation of the current geographic distribution of the Gunnison sage-grouse, or *i.e.,* increase the connectivity between habitat that is known to be currently occupied.

(4) Unoccupied portions of units are in areas that were occupied in the near past and are located within the historical range of the species such that they will serve as corridors, or movement areas, between currently occupied sites. Most proposed unoccupied subunits lie within 18.5 km of an occupied area.

(5) All of the unoccupied portions of the proposed critical habitat units contain one or more of the primary constituent elements essential for the conservation of the Gunnison sage-grouse. We based this determination on information in the 2005 RCP (GSRSC 2005, p. 54).

Unit 1: Monticello—Dove Creek

Unit 1, the Monticello—Dove Creek Unit, consists of 140,973 ha (348,353 ac) of Federal, State, and private lands in San Juan County, Utah; and Montrose, San Miguel, and Dolores Counties, Colorado. Approximately 17,823 ha (44,043 ac) (12.6 percent) of the land area within the unit is managed by Federal agencies, 1,331 ha (3,290 ac) (0.9 percent) is owned by the State of Colorado and the State of Utah, and the remaining 301,019 ha (121,818 ac) (86.4 percent) is comprised of private lands. Within the Dove Creek, Colorado, portion of the unit, protected lands (via easement or landownership by a conservation organization) occur on 330 ha (815 ac) of private lands within the occupied portion of the unit (CPW 2011c, p. 11; CPW 2012b, p. 6), and no lands are included under the Gunnison sage-grouse CCAA. We consider 45,303 ha (111,945 ac) within this unit to be currently occupied (32.1 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Monticello—Dove Creek Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse, but these areas are interspersed within lands in agricultural production. Within the occupied portion of this Unit, approximately 23,220 ha (57,377 ac) or 51 percent of the area is currently in agricultural production (USGS 2004, entire). However, a significant portion of the agricultural lands within the Unit are enrolled in the CRP program and many CRP lands are used by Gunnison sage-grouse (Lupus *et al.* 2006, pp. 959–960; Ward 2007, p. 15).

Threats to the physical and biological features within the Monticello—Dove Creek Unit include, but are not limited to: A high degree of habitat loss, degradation, and fragmentation resulting from conversion to agriculture; oil and gas production and associated infrastructure; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats from development; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 95,671 ha (236,408 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse,

these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitats. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 2: Piñon Mesa

Unit 2, the Piñon Mesa Unit, consists of 99,220 ha (245,179 ac) of Federal, State, and private lands in Grand County, Utah; and Mesa County, Colorado. Approximately 62,139 ha (153,548 ac) (62.6 percent) of the land area within the unit is managed by Federal agencies, 30 ha (73 ac) (less than one percent) is owned by the State of Utah, and the remaining 37,052 ha (91,558 ac) (37.3 percent) is comprised of private lands. We consider 15,744 ha (38,905 ac) within this unit to be currently occupied (15.9 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Piñon Mesa Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 5,405 ha (13,355 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 6,828 ha (16,873 ac) are included under the Gunnison sage-grouse CCAA (CPW 2012b, p. 11). Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Piñon Mesa unit (USGS 2004, entire).

Threats to the physical and biological features within the Piñon Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 83,476 ha (206,274 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit. Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 3: San Miguel Basin

Unit 3, the San Miguel Basin Unit, consists of 67,084 ha (165,769 ac) of Federal, State, and local government-owned lands, and private lands in Montrose, San Miguel, and Ouray counties, Colorado. Approximately 22,597 ha (55,837 ac) (33.7 percent) of the land area within the unit is managed by Federal agencies, 5,908 ha (14,598 ac) (8.8 percent) is owned by the State of Colorado, and the remaining 38,580 ha (95,334 ac) (57.5 percent) is comprised of private lands. We consider 41,023 ha (101,371 ac) within this unit to be currently occupied (61.2 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the San Miguel Basin Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 2,698 ha (6,666 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 292 ha (722 ac) are included under the Gunnison sage-grouse CCAA. Approximately 15 percent of the occupied range in the San Miguel Basin is currently in agricultural production.

Threats to the physical and biological features within the San Miguel Basin Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; and oil and gas development and associated infrastructure, all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide

prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 26,061 ha (64,398 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 4: Cerro Summit—Cimarron—Sims Mesa

Unit 4, the Cerro Summit—Cimarron—Sims Mesa Unit, consists of 25,377 ha (62,708 ac) of Federal, State, and local government-owned lands, and private lands in Montrose, Ouray, and Gunnison Counties, Colorado. Approximately 4,171 ha (10,307 ac) (16.4 percent) of the land area within the unit is managed by Federal agencies, 1,645 ha (4,066 ac) (6.5 percent) is owned by the State of Colorado, and the remaining 19,561 ha (48,335 ac) (77.1 percent) is comprised of private lands. We consider 15,038 ha (37,161 ac) within this unit to be currently occupied (59.3 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Cerro Summit—Cimarron—Sims Mesa Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands within the unit, 1,395 ha (3,447 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6), and no lands are included under the Gunnison sage-grouse CCAA. In the Cerro Summit—Cimarron—Sims Mesa population, approximately 14 percent (5,133 ha (2,077 ac)) of the occupied range is currently in agricultural production (USGS 2004, entire).

Threats to the physical and biological features within the Cerro Summit—Cimarron—Sims Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 10,339 ha (25,547 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

We recognize that this proposed critical habitat unit is considerably smaller than the RCP modeled minimum habitat patch size required to support a viable Gunnison sage-grouse population. Nevertheless, this proposed critical habitat unit encompasses all existing and potential Gunnison sage-grouse habitat in the vicinity. As such, in the absence of natural immigration of Gunnison sage-grouse, the population within this critical habitat unit may need to be augmented through the translocation of birds from larger populations or the release of captive-produced birds.

Unit 5: Crawford

Unit 5, the Crawford Unit, consists of 39,304 ha (97,123 ac) of Federal, State,

and local government-owned lands, and private lands in Delta, Montrose, and Gunnison Counties, Colorado. Approximately 17,731 ha (43,814 ac) (45.1 percent) of the land area within the unit is managed by Federal agencies, 112 ha (277 ac) (0.3 percent) is jointly owned by the State of Colorado and the Federal Government, and the remaining 21,461 ha (53,032 ac) (54.6 percent) is comprised of private lands. We consider 14,170 ha (35,015 ac) within this unit to be currently occupied (36.1 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Crawford Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 414 ha (1,022 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6. In addition, approximately 1,068 ha (2,639 ac) are included under the Gunnison sage-grouse CCAA. Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Crawford Unit (USGS 2004, entire).

Threats to the physical and biological features within the Crawford Mesa Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 25,134 ha (62,108 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

Unit 6: Gunnison Basin

Unit 6, the Gunnison Basin Unit, consists of 298,173 ha (736,802 ac) of Federal, State, and local government-owned lands, and private lands in Gunnison, Hinsdale, Montrose, and Saguache Counties, Colorado. Approximately 196,625 ha (485,870 ac) (65.9 percent) of the land area within the unit is managed by Federal agencies, 6,052 ha (14,955 ac) (2.0 percent) is owned by the State of Colorado, 314 ha (777 ac) (less than one percent) is jointly owned by the State of Colorado and the Federal Government, 21 ha (52 ac) (less than one percent) is owned by Gunnison County and the City of Gunnison, and the remaining 95,160 ha (235,145 ac) (31.9 percent) is comprised of private lands. We consider 239,959 ha (592,952 ac) within this unit to be currently occupied (80.5 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54). The Gunnison Basin contains the largest expanse of sagebrush plant communities within the presettlement range of Gunnison sage-grouse.

The occupied portion of the Gunnison Basin Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. Within the currently occupied lands in the unit, 17,466 ha (43,160 ac) of private lands are largely protected from development through permanent conservation easements or fee title ownership held by various land trust and ranchland conservation organizations, and CPW (CPW 2011c, p. 11; CPW 2012b, p. 6). In addition, approximately 5,012 ha (12,385 ac) are included under the Gunnison sage-grouse CCAA.

Threats to the physical and biological features within the Gunnison Basin Unit include, but are not limited to: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; and past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: the rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These

unoccupied areas comprise approximately 58,214 ha (143,850 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, particularly with continued direct and functional habitat loss (see discussion under Factor A in the proposed listing rule for the species, which is published elsewhere in today's **Federal Register**), these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other populations and within the Gunnison Basin.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations. The maintenance and enhancement of interpopulation connectivity is particularly important for the Gunnison Basin because it is the largest population in the species range and is therefore the most likely source of dispersal of Gunnison sage-grouse to other populations.

Unit 7: Poncha Pass

Unit 7, the Poncha Pass Unit, consists of 19,543 ha (48,292 ac) of Federal, State, and local government owned lands, and private lands in Saguache and Chaffee Counties, Colorado. Approximately 12,257 ha (30,287 ac) (62.7 percent) of the land area within the unit is managed by Federal agencies, 844 ha (2,084 ac) (4.3 percent) is owned by the State of Colorado, and the remaining 6,443 ha (15,921 ac) (33.0 percent) is comprised of private lands. We consider 8,262 ha (20,416 ac) within this unit to be currently occupied (42.3 percent), based on the mapping developed for the 2005 RCP (GSRSC 2005, p. 54).

The occupied portion of the Poncha Pass Unit contains the physical and biological features essential to the conservation of the Gunnison sage-grouse. No lands within the currently occupied lands in the unit are protected from development through permanent conservation easements or fee title ownership by conservation organizations, and no lands are included under the Gunnison sage-grouse CCAA (CPW 2011c, p. 11; CPW 2012b, p. 6). Habitat conversion to agriculture is limited to less than 3 percent of the occupied portion of the Poncha Pass (USGS 2004, entire).

Threats to the physical and biological features within the Poncha Pass Unit include: Residential and commercial development including associated land-clearing activities for the construction of access roads, utilities, and fences; increased recreational use of roads and trails; the proliferation of predators of Gunnison sage-grouse; the spread of invasive plant species and associated changes in sagebrush plant community structure and dynamics; past and present grazing management that degrades or eliminates vegetation structure; all of which can result in the loss, degradation, or fragmentation of sagebrush plant communities. Special management actions that may be needed to address these threats include, but are not limited to: The rangewide prioritization and protection of crucial seasonal habitats subject to future residential and commercial development and increasing recreational use of roads and trails; the control of invasive plant species and restoration of historic plant community structure and dynamics, including altered fire regimes and other natural disturbance factors; and the implementation of grazing regimes that result in proper vegetation structure for Gunnison sage-grouse life-history needs in areas used for domestic and wild ungulate grazing and browsing.

Limiting the designation of critical habitat in this unit only to currently occupied areas would be inadequate to ensure the conservation of the species. Accordingly, we propose for designation currently unoccupied areas that we conclude are essential for the conservation of the species. These unoccupied areas comprise approximately 11,281 ha (27,877 ac), consisting of lands defined in the 2005 RCP as potential habitat or vacant or unknown habitat (GSRSC 2005, p. 54). These areas consist of lands with varying amounts of overall sagebrush cover, or have habitat types suitable for movements and dispersal. These areas are also located adjacent to occupied habitat or are located immediately between surrounding populations. In addition to contributing to the fulfillment of the landscape-scale habitat needs of Gunnison sage-grouse, these areas provide habitat for future population growth and reestablishment of portions of presettlement range, as well as to facilitate or allow movement between other units and within the unit.

Some unoccupied habitat areas within this unit consist of lands that recently supported sagebrush-dominant plant communities but are currently in agricultural production or are currently subject to encroachment by coniferous trees or shrubs, most commonly piñon-juniper or mountain shrub plant communities. These areas require restoration to reestablish or enhance sagebrush communities to support the primary constituent elements of Gunnison sage-grouse nesting or brood-rearing habitat. However, in their current state, these areas provide essential habitat for interpopulation movements and reduce population isolation and increase genetic exchange among populations.

We recognize that this proposed critical habitat unit is considerably smaller than the RCP modeled minimum habitat patch size required to support a viable Gunnison sage-grouse population. Nevertheless, this proposed critical habitat unit encompasses all existing and potential Gunnison sage-grouse habitat in the vicinity. As such, in the absence of natural immigration of Gunnison sage-grouse, the population within this critical habitat unit may need to be augmented through the translocation of birds from larger populations or the release of captive-produced birds.

Effects of Critical Habitat Designation

Section 7 Consultation

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

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other manmade structures because such lands lack physical and biological features necessary for Gunnison sage-grouse. 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 sites. 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 and biological features in the adjacent critical habitat.

Likewise, due to past land uses, vegetation changes, or a number of other natural or manmade factors, some areas within the mapped proposed critical habitat may currently lack the site-specific physical and biological features (primary constituent elements) necessary to support Gunnison sage-grouse (see section, Primary Constituent Elements for Gunnison Sage-grouse). If critical habitat is designated, for actions involving lands that lack the primary constituent elements for Gunnison sage-grouse, section 7 consultation as it relates to critical habitat would not be required.

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

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

Application of the ''Adverse Modification'' Standard

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

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

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

(1) Actions that would result in the loss of sagebrush overstory plant cover or height. Such activities could include, but are not limited to, the removal of native shrub vegetation by any means for any infrastructure construction project; direct conversion to agricultural land use; habitat improvement or restoration projects involving mowing, brush-beating, Dixie harrowing, disking, plowing, or prescribed burning; and fire suppression activities. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of Gunnison sage-grouse.

(2) Actions that would result in the loss or reduction in native herbaceous understory plant cover or height, and a reduction or loss of associated arthropod communities. Such activities could include, but are not limited to, livestock grazing, the application of herbicides or insecticides, prescribed burning and fire suppression activities; and seeding of nonnative plant species that would compete with native species for water, nutrients, and space. These

activities could eliminate or reduce the quality of the habitat necessary for the growth and reproduction of Gunnison sage-grouse through a reduction in food quality and quantity, and increased exposure to predation.

(3) Actions that would result in Gunnison sage-grouse avoidance of an area during one or more seasonal periods. Such activities could include, but are not limited to, the construction of vertical structures such as power lines, fences, communication towers, and buildings; management of motorized and nonmotorized recreational use; and activities such as well drilling, operation, and maintenance, which would entail significant human presence, noise, and infrastructure. These activities could result in the direct and functional loss of habitat if Gunnison sage-grouse avoid or reduce use of otherwise suitable habitat in the vicinity of these structures or concentrated activity centers.

Exemptions

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

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

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

(2) A statement of goals and priorities;

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

(4) A monitoring and adaptive management plan.

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

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

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

Exclusions

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

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

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. All of the critical habitat united (CHUs) contain private lands. Federal lands with oil and gas leases, grazing permits, rights-of-way for utilities and telecommunications, and recreational uses are included in some units. Several State-owned parcels are included in some units where hunting, wildlife viewing, and other recreational activities occur. The economic analysis will estimate the economic impact of a potential designation of critical habitat on these activities.

During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that no lands within the proposed designation of critical habitat for Gunnison sage-grouse are owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not anticipate that he will exercise discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

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

We acknowledge and commend landowners who have made significant commitments to manage their lands in a manner that is compatible with the conservation of Gunnison sage-grouse. In this proposed rule, we are seeking input from the public, especially private landowners, as to whether or not the Secretary should exclude lands enrolled under the Gunnison sage-grouse CCAA,

lands under permanent conservation easements, or fee title properties with conservation measures applicable to Gunnison sage-grouse from the final critical habitat designation under section 4(b)(2) of the Act. The Service also acknowledges conservation efforts such as participation in the Sage Grouse Initiative that is led by the Natural Resources Conservation Service. (Please see the Information Requested section of this proposed rule for instructions on how to submit comments).

A decision as to whether to exclude these lands from the proposed designation will require consideration of several important factors. Enrollment in the CCAA can be withdrawn by the landowner at any time and most lands have been enrolled less than two years. Furthermore, CCAA enrollment eligibility will expire if a final listing determination is made for Gunnison sage-grouse. If the agreed-upon, voluntary land management practices within the conditions of the CCAA are met by the land owner, then the designation of critical habitat on these lands should not result in any additional regulatory requirements. For lands under conservation easement, we lack information to evaluate if conditions or practices incorporated into the easement conditions afford adequate protection to the physical or biological features of Gunnison sage-grouse. Also, because these lands are privately owned, absent a Federal nexus, the designation of critical habitat on these lands will incur no additional regulatory burden beyond the prohibitions of section 9(a)(2) of the Act.

In preparing this proposal, we have determined that there are currently no habitat conservation plans (HCPs) for the Gunnison sage-grouse, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Accordingly, the Secretary does not propose to exercise his discretion to exclude any areas from the final designation based on other relevant impacts.

Peer Review

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

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

Public Hearings

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

Required Determinations

Our draft economic analysis will be completed after this proposed rule is published. Therefore, we will defer our Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Energy Supply, Distribution, or Use—Executive Order 13211, Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), and Small Business Regulatory Enforcement Fairness Act (SBREFA), findings until after this analysis is done.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

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

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

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

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

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat

designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

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. Gunnison sage-grouse occur in areas with oil and gas activity. These areas are primarily limited to the Monticello—Dove Creek and San Miguel populations. A portion of the Gunnison Basin Unit occurs in an area with high geothermal energy development potential. Well pads and their existing infrastructure are within proposed critical habitat units. On Federal lands, entities conducting oil and gas related activities as well as power companies would need to consult within areas designated as critical habitat. Although we do not believe the impacts resulting from this consultation requirement would rise to the level of significant, we will make our finding after the draft economic analysis has been completed. We will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

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

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

(2) We do not believe that this rule would significantly or uniquely affect small governments because only a small percentage of the total land ownership falls on small government lands such as those owned by the City of Gunnison and Gunnison County. Therefore, a Small Government Agency Plan is not required. We do not believe that this rule would significantly or uniquely affect small governments because it would 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. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Gunnison sage-grouse in a takings implications assessment. Critical habitat designation 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. The takings implications assessment concludes that this proposed designation of critical habitat for Gunnison sage-grouse would

not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism impact summary statement is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Colorado and Utah. The designation of critical habitat in areas currently occupied by the Gunnison sage-grouse may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

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

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We 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, the rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the 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 any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).] However, when the range of the species includes States within the Tenth Circuit, such as that of the Gunnison sage-grouse, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation prior to making a final determination of critical habitat and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Government-to-Government Relationship With Tribes

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

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

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Western Colorado Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by adding an entry for ''Sage-grouse, Gunnison'' to the List of Endangered and Threatened Wildlife in alphabetical order under ''BIRDS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
BIRDS							
*	*	*	*	*	*		*
Sage-grouse, Gunnison.	*Centrocercus minimus.*	U.S.A. (AZ, CO, NM, UT).	Entire	E		17.95(b)	NA
*	*	*	*	*	*		*

■ 3. In § 17.95, amend paragraph (b) by adding an entry for ''Gunnison Sage-Grouse (*Centrocercus minimus*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Gunnison Sage-grouse (*Centrocercus minimus*)

(1) Critical habitat units are depicted for Grand and San Juan Counties, Utah, and Chaffee, Delta, Dolores, Gunnison, Hinsdale, Mesa, Montrose, Ouray, Saguache, and San Miguel Counties, Colorado, on the maps below.

(2) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of Gunnison sage-grouse consist of five components:

(i) *Landscape-scale Primary Constituent Element.* Primary Constituent Element 1—Areas with vegetation composed primarily of sagebrush plant communities (at least 25 percent of primarily sagebrush land cover within a 1.5-km (0.9-mi) radius of any given location), of sufficient size and configuration to encompass all seasonal habitats for a given population of Gunnison sage-grouse, and facilitate movements within and among populations.

(ii) *Site-scale Primary Constituent Elements.*

(A) Primary Constituent Element 2—Breeding habitat composed of sagebrush plant communities with structural characteristics within the ranges described in the following table. Habitat structure values are average values over a project area.

Vegetation variable	Amount in habitat
Sagebrush Canopy	10–25 percent
Non-sagebrush Canopy	5–15 percent
Total Shrub Canopy	15–40 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–40 percent
Forb Cover	5–40 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	5–15 cm (2.0–5.9 in)

(B) Primary Constituent Element 3—Summer-late fall habitat composed of sagebrush plant communities with structural characteristics within the ranges described in the following table. Habitat structure values are average values over a project area.

Vegetation variable	Amount in habitat
Sagebrush Canopy	5–20 percent
Non-sagebrush Canopy	5–15 percent
Total Shrub Canopy	10–35 percent
Sagebrush Height	25–50 cm (9.8–19.7 in)
Grass Cover	10–35 percent
Forb Cover	5–35 percent
Grass Height	10–15 cm (3.9–5.9 in)
Forb Height	3–10 cm (1.2–3.9 in)

(C) Primary Constituent Element 4—Winter habitat composed of sagebrush plant communities with sagebrush canopy cover between 30 to 40 percent and sagebrush height of 40 to 55 cm (15.8 to 21.7 in). These habitat structure values are average values over a project area.

(D) Primary Constituent Element 5—Alternative, mesic habitats used primarily in the summer-late fall season.

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

(4) *Critical habitat map units.* Data layers defining map units were created from a number of geospatial data, including: Polygons generated as part of the Gunnison sage-grouse Rangewide Conservation Plan, Southwest Regional Gap Analysis Project (SWReGAP) land cover data, National Agriculture Imagery Program (NAIP) aerial images, and USGS 7.5 minute quadrangle maps. Critical habitat units were then mapped as shapefiles using Universal Transverse Mercator (UTM) Zone 13N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, (*http://www.fws.gov/coloradoes/*), *http://www.regulations.gov* at Docket No. FWS–R6–ES–2011–0111, 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) **Note:** Index map follows:

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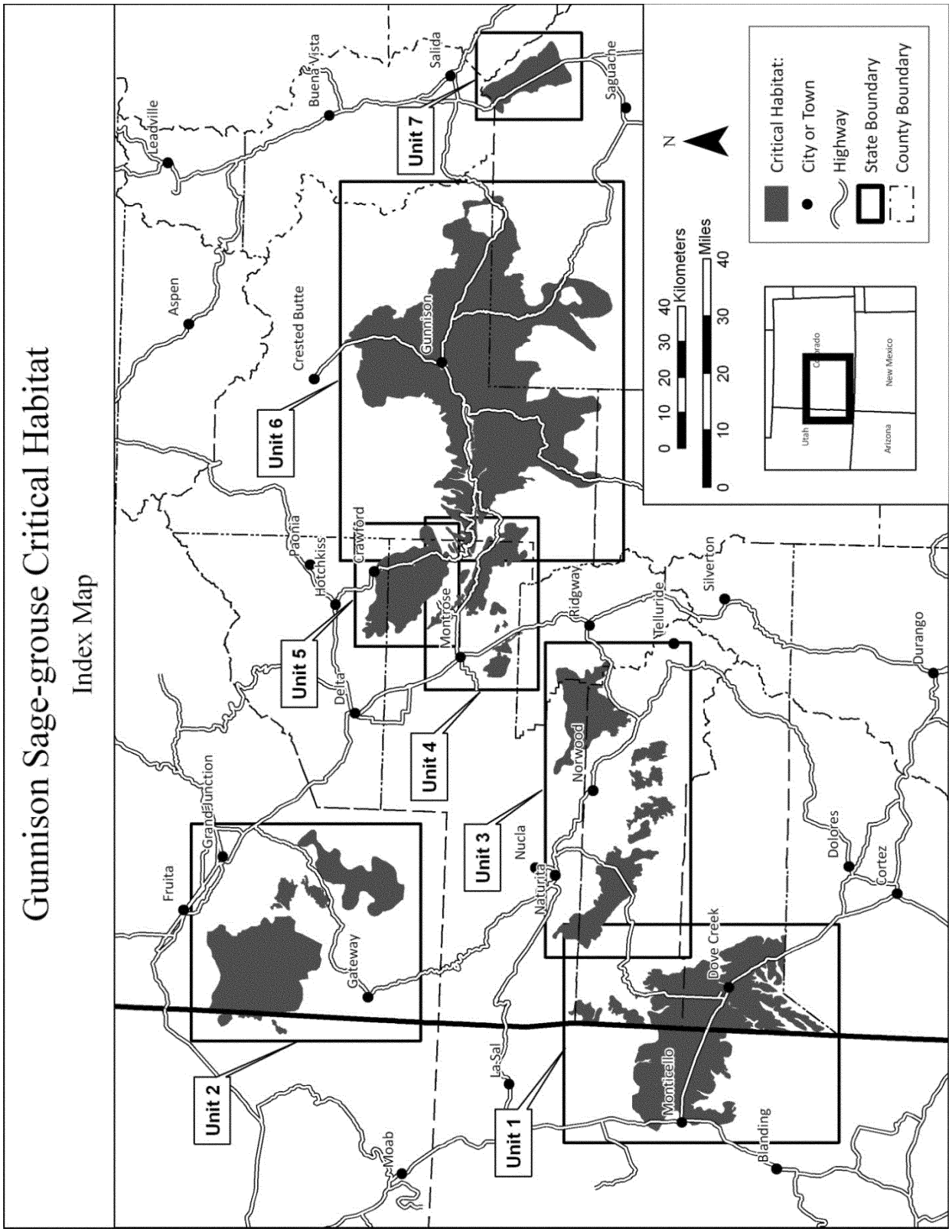
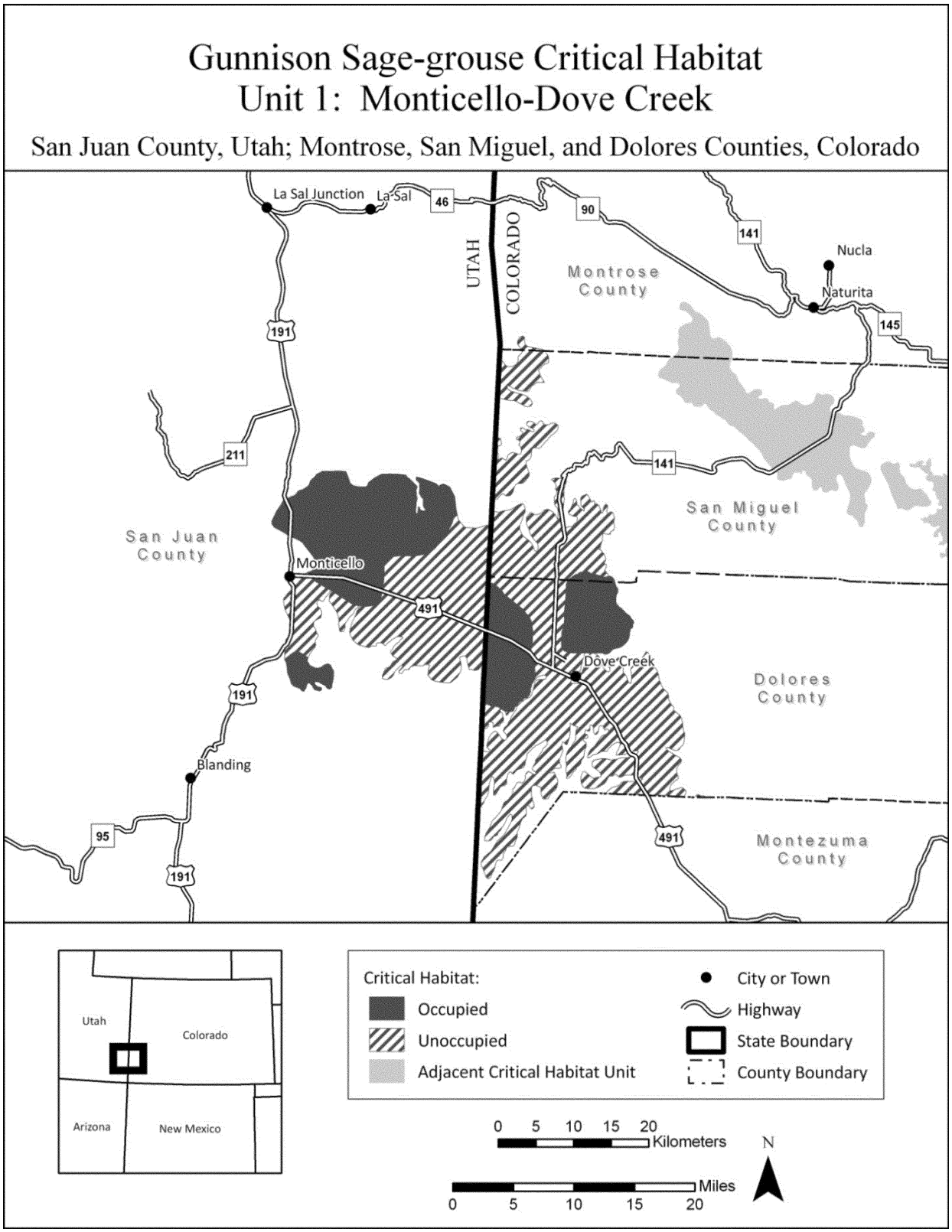


(6) Unit 1: Monticello—Dove Creek: San Juan County, Utah, and Montrose, San Miguel, and Dolores Counties, Colorado.

(i) *General Description:* 140,973 ha (348,353 ac); 20.4 percent of all critical habitat.

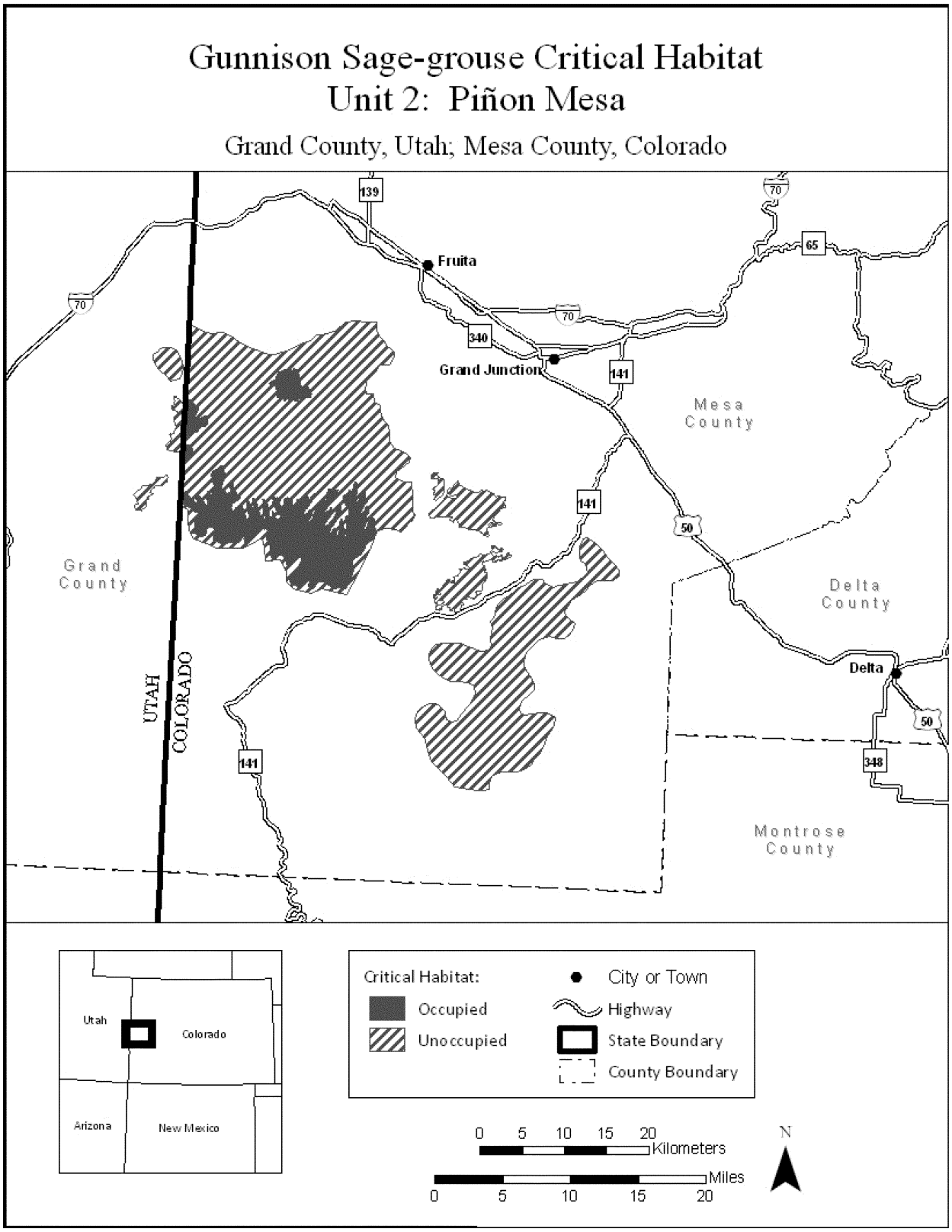
(ii) Map of Unit 1, Monticello—Dove Creek: San Juan County, Utah, and Montrose, San Miguel, and Dolores Counties, Colorado, follows:



(7) Unit 2: Piñon Mesa: Grand County, Utah, and Mesa County, Colorado.

(i) *General Description:* 99,220 ha (245,179 ac); 14.4 percent of all critical habitat.

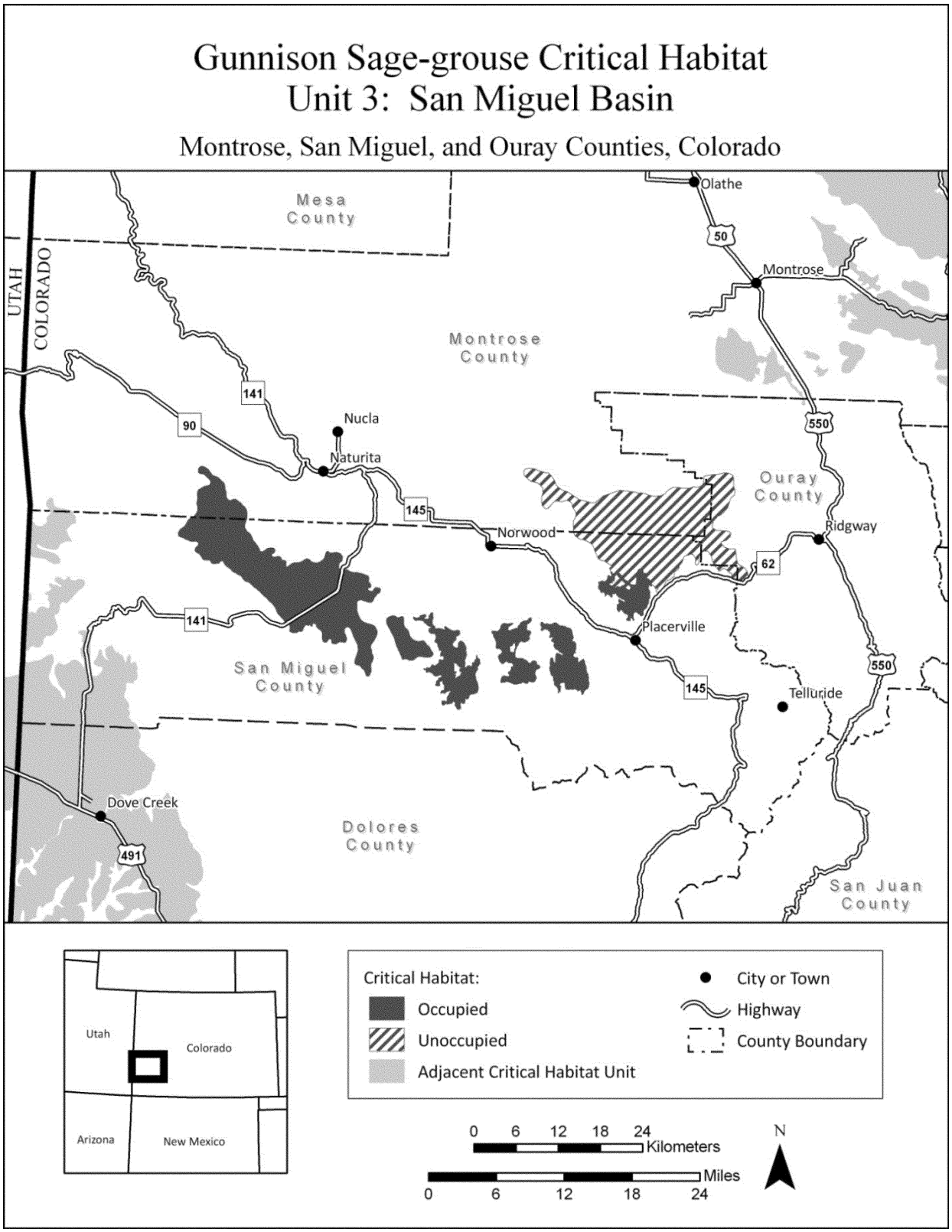
(ii) Map of Unit 2, Piñon Mesa: Grand County, Utah, and Mesa County, Colorado, follows:



(8) Unit 3: San Miguel Basin: Montrose, San Miguel, and Ouray Counties, Colorado.

(i) *General Description:* 67,084 ha (165,769 ac); 9.7 percent of all critical habitat.

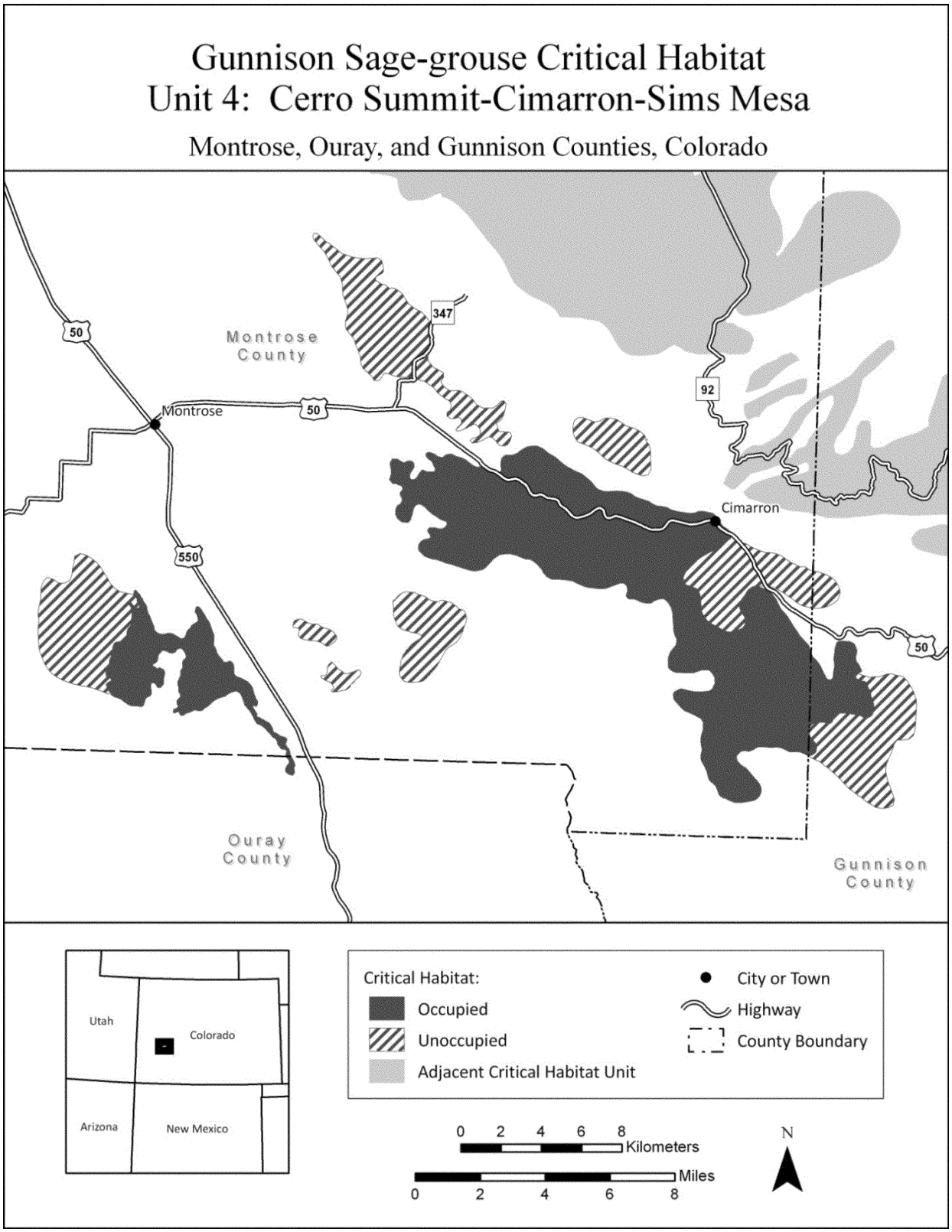
(ii) Map of Unit 3, San Miguel Basin: Montrose, San Miguel, and Ouray Counties, Colorado, follows:



(9) Unit 4: Cerro Summit-Cimarron-Sims Mesa: Montrose, Ouray, and Gunnison Counties, Colorado.

(i) *General Description:* 25,377 ha (62,708 ac); 3.7 percent of all critical habitat.

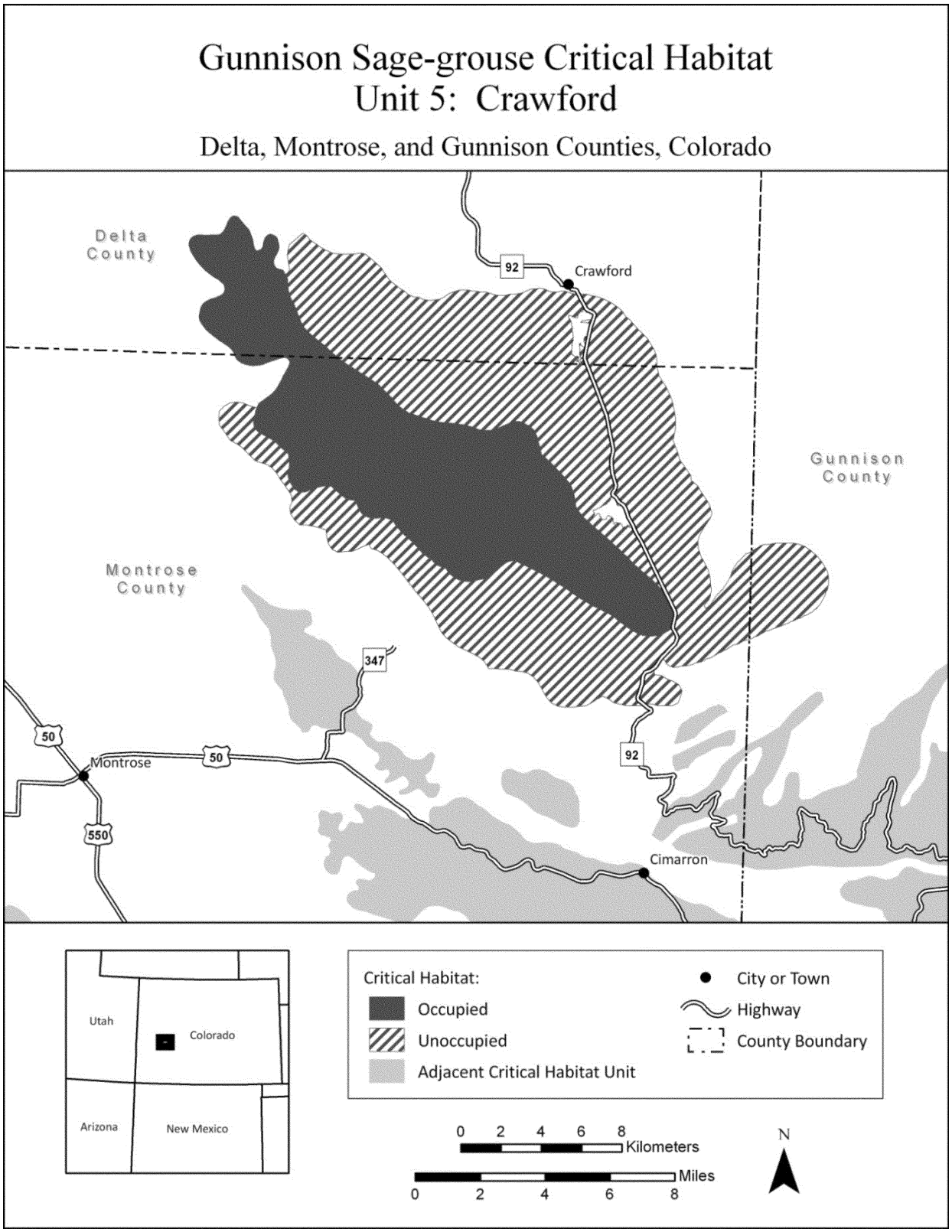
(ii) Map of Unit 4, Cerro Summit-Cimarron-Sims Mesa: Montrose, Ouray, and Gunnison Counties, Colorado, follows:



(10) Unit 5: Crawford: Delta, Montrose, and Gunnison Counties, Colorado.

(i) *General Description:* 39,304 ha (97,123 ac); 5.7 percent of all critical habitat.

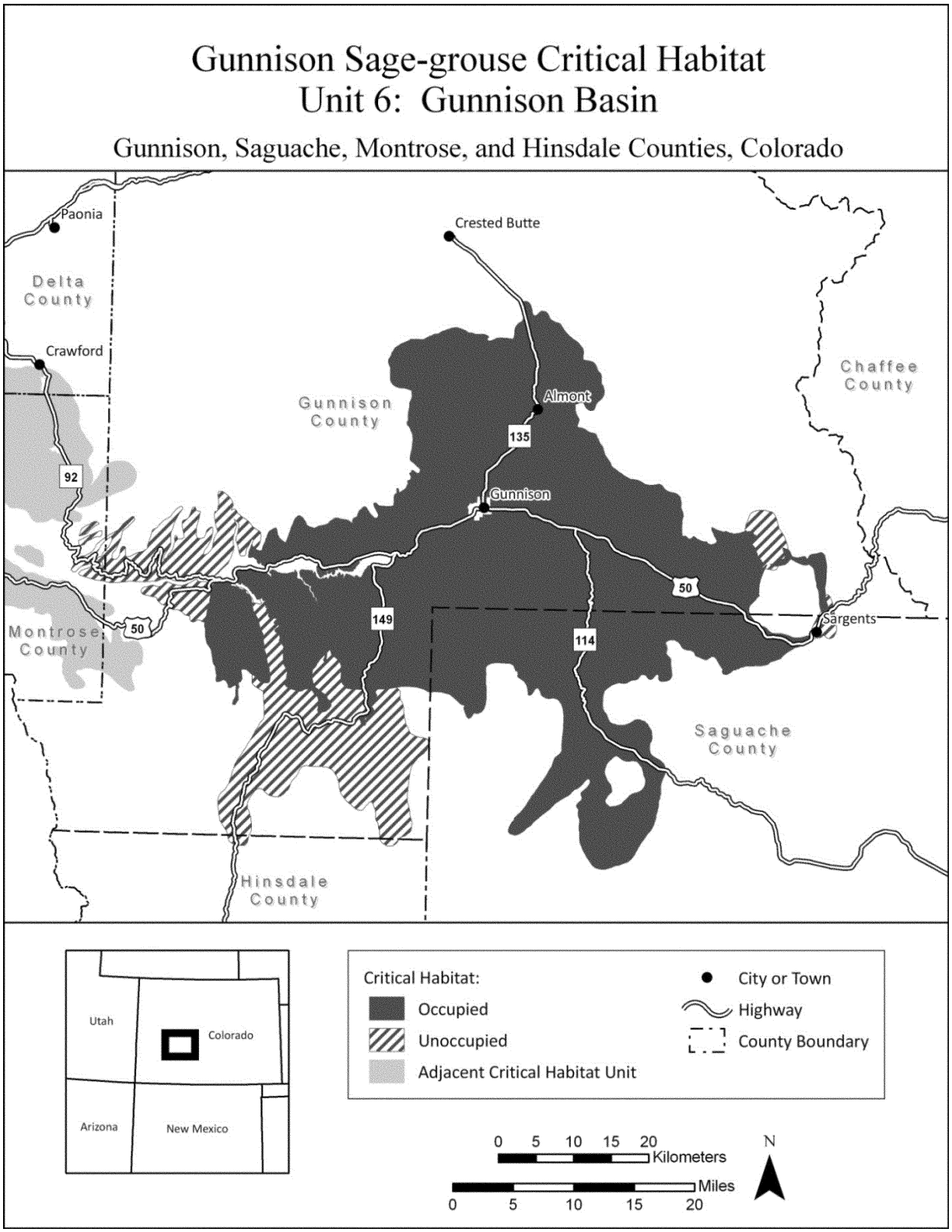
(ii) Map of Unit 5, Crawford: Delta, Montrose, and Gunnison Counties, Colorado, follows:



(11) Unit 6: Gunnison Basin: Gunnison, Saguache, Montrose, and Hinsdale Counties, Colorado.

(i) *General Description:* 298,173 ha (736,802 ac); 43.2 percent of all critical habitat.

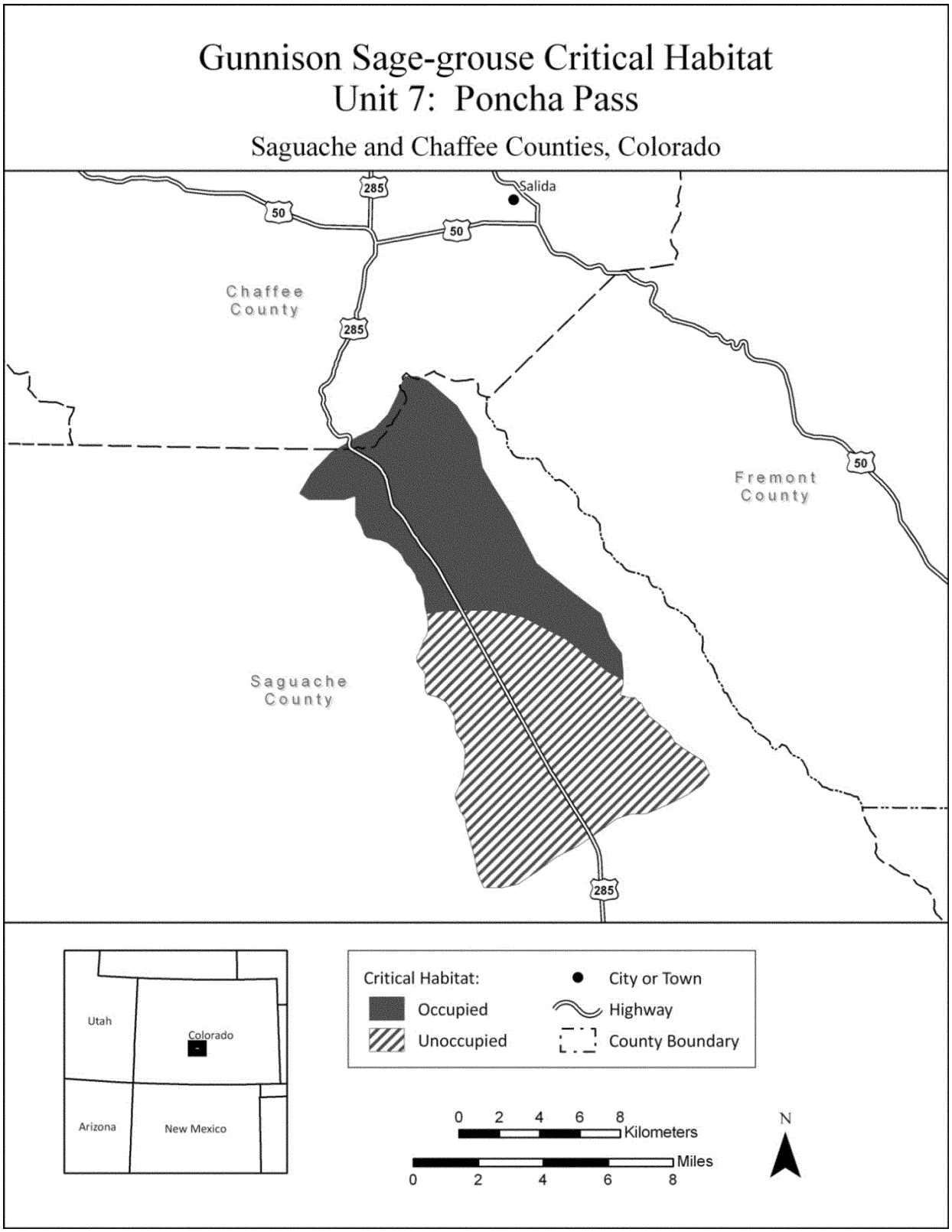
(ii) Map of Unit 6, Gunnison Basin: Gunnison, Saguache, Montrose, and Hinsdale Counties, Colorado, follows:



(12) Unit 7: Poncha Pass: Saguache and Chaffee Counties, Colorado.

(i) *General Description:* 19,543 ha (48,292 ac); 2.8 percent of all critical habitat.

(ii) Map of Unit 7, Poncha Pass: Saguache and Chaffee Counties, Colorado, follows:



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Dated: December 13, 2012.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–31666 Filed 1–10–13; 8:45 am]

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