DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2024–0053; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BH41

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Cedar Key Mole Skink and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the Cedar Key mole skink (*Plestiodon egregius insularis*), a lizard subspecies from the Cedar Keys, Florida, as an endangered species under the Endangered Species Act of 1973, as amended (Act). After a review of the best available scientific and commercial information, we find that listing this subspecies is warranted. We also propose to designate critical habitat for the Cedar Key mole skink under the Act. In total, approximately 2,713 acres (1,098 hectares) in Levy County, Cedar Keys, Florida, fall within the boundaries of the proposed critical habitat designation. In addition, we announce the availability of an economic analysis of the proposed designation of critical habitat for the Cedar Key mole skink. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before October 7, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 23, 2024.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2024–0053, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R4–ES–2024–0053, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available on the Service's website at *https://www.fws.gov/office/florida-ecological-services/library* and at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2024–0053. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2024–0053 and on the Service's website at *https://www.fws.gov/office/florida-ecological-services/library.*

FOR FURTHER INFORMATION CONTACT: Lourdes Mena, Division Manager, Classification and Recovery, Florida Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; *lourdes_mena@fws.gov;* telephone 352–749–2462. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R4–ES–2024–0053 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the Cedar Key mole skink meets the Act's definition of an endangered species; therefore, we are proposing to list it as endangered and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the Cedar Key mole skink as an endangered species under the Act, and we propose the designation of critical habitat for the subspecies.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the Cedar Key mole skink is endangered due to threats associated with climate change, specifically sea level rise, increased high tide flooding, and increased intensity of storm events (Factor E).

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

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other 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 subspecies' biology, range, and population trends, including:

(a) Biological or ecological requirements of the subspecies, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this subspecies;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the subspecies, its habitat, or both.

(2) Threats and conservation actions affecting the subspecies, including:

(a) Factors that may be affecting the continued existence of the subspecies, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or humanmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this subspecies; and

(c) Existing regulations or conservation actions that may be addressing threats to this subspecies.

(3) Additional information concerning the historical and current status of this subspecies.

(4) Specific information on:

(a) The amount and distribution of Cedar Key mole skink habitat;

(b) Any additional areas occurring within the range of the subspecies, the Cedar Keys in Levy County, Florida, that should be included in the critical habitat designation because they (i) are occupied at the time of listing and contain the physical or biological feature that is essential to the conservation of the subspecies and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the subspecies;

(c) Special management considerations or protection that may be needed in the critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) Whether areas not occupied at the time of listing qualify as habitat for the species and are essential for the conservation of the species.

(5) Land use designations and current or planned activities and their possible impacts on proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(7) Information on the extent to which the description of probable economic impacts in the economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

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

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, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

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

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after the publication of this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the subspecies is threatened instead of endangered, or we may conclude that the subspecies does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the subspecies. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

Public Hearing

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

hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On July 11, 2012, we received a petition from the Center for Biological Diversity to list the Cedar Key mole skink as an endangered or threatened species under the Act. On July 1, 2015, we published in the **Federal Register** (80 FR 37568) a 90-day finding that the petition provided substantial information indicating that listing the Cedar Key mole skink may be warranted. On December 19, 2018, we published in the **Federal Register** (83 FR 65127) a 12-month finding that the Cedar Key mole skink did not warrant listing under the Act. On January 26, 2022, the Center for Biological Diversity filed suit against the Service, alleging the Service did not use the best available scientific data regarding sea level rise and its impacts to Cedar Key mole skink habitat in its 12-month finding. In May 2022, the Service agreed to submit a new finding to the **Federal Register** by July 31, 2024. This finding and proposed rule reflect the updated assessment of the status of the Cedar Key mole skink based on the best available science, including an updated species status assessment for the subspecies (Service 2023, entire).

Peer Review

A species status assessment (SSA) team prepared an SSA report for the Cedar Key mole skink. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the subspecies, including the impacts of past, present, and future factors (both negative and beneficial) affecting the subspecies.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing and recovery actions under the Act, we solicited independent scientific review of the information contained in the Cedar Key mole skink SSA report. We sent the SSA report to six independent peer reviewers and received one response. Results of this structured peer review process can be found at *https://www.regulations.gov* and *https://www.fws.gov/office/florida-ecological-services.* In preparing this proposed rule, we incorporated the results of this review, as appropriate, into the SSA report, which is the foundation for this proposed rule.

Summary of Peer Reviewer Comments

As discussed in Peer Review above, we received comments from one peer reviewer on the draft SSA report. We reviewed the comments for substantive issues and new information regarding the contents of the SSA report. The peer reviewer generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions, including clarifications in terminology and other editorial suggestions.

The peer reviewer suggested that our statement that ''rafting is rare, but does occur'' was inappropriate. The peer reviewer noted that there is no evidence that rafting occurs in the Cedar Key mole skink (or any mole skink subspecies) and that, in fact, genetic evidence suggests the opposite (that there is no movement of mole skinks among islands). We updated the SSA report to indicate that rafting is unlikely.

The peer reviewer also commented that our analysis of ''potential habitat'' on the two developed islands, Way Key and Airstrip Island, was an overrepresentation of the amount of habitat truly available to the Cedar Key mole skink. In our initial analysis, we included high intensity and low intensity urban data layers for these islands as part of our calculation of potential habitat available because skinks have been found in backyards, in parking lots, along roadsides, and in other disturbed or developed areas. However, these data layers also included roads, buildings, and other developed areas, which are not considered habitat for the Cedar Key mole skink. As a result, our use of these data layers increased what we had identified as potential habitat on Airport Island from 1.00 acre (0.40 hectares) to 52.43 acres (21.0 hectares), and on Way Key from 2.65 acres (1.07 hectares) to 266.14 acres (107.70 hectares). We agree with the peer reviewer that the use of the urban areas in our analysis overestimated the amount of habitat truly available to the Cedar Key mole skink. Thus, we restricted our analysis of these two islands to only include the preferred habitat data layers that included beaches, dunes, and coastal hammock. We included the additional analysis focused on high-intensity and low-intensity urban areas on Way Key and Airport Island as part of appendix A in the SSA report.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the Cedar Key mole skink (*Plestiodon egregius insularis*) is presented in the SSA report (Service 2023, pp. 2–16). The Cedar Key mole skink is one of five distinct subspecies of mole skinks in Florida, all in the genus *Plestiodon* (previously *Eumeces*) (Brandley et al. 2005, pp. 387–388), and is endemic to the Cedar Keys, Florida. This subspecies represents a unique genetic lineage that is distinct from the other four mole skink subspecies (Brandley et al. 2005, pp. 387–388; Parkinson et al. 2016, entire). The Cedar Key mole skink is the largest of the five subspecies, approaching 15 centimeters (5.9 inches), with the tail accounting for two-thirds of the length.

The Cedar Key mole skink is semi-fossorial (adapted to digging, burrowing, and living underground) and cryptic in nature. The Cedar Key mole skink is a cold-blooded reptile and therefore highly dependent air and soil temperature to thermoregulate (maintain body core temperature) (Mount 1963, p. 362). Ground cover moderates soil temperatures and provides shade to assist in the skinks' thermoregulation in hot climate. The optimum temperature range for the mole skink species (*Plestiodon egregius*) is 26 to 34 degrees Celsius (C) (78.8 to 93.2 degrees Fahrenheit (F)) with a mean of 29.5 C (85.1 F) (Mount 1963, p. 363). Mole skinks are considered thermoconformers, lacking the capacity to adjust or regulate to changes in temperature outside of this stable and relatively narrow thermal range in which it occurs (Gallagher et al 2015, p. 62).

The specific diet of Cedar Key mole skink is unknown, but in general, skinks in the genus *Plestiodon* are known to eat ants, spiders, crickets, beetles, termites, small bugs, mites, and butterfly larva (Hamilton and Pollack 1958, p, 26). Native snakes are considered natural predators of mole skinks (Hamilton and Pollack 1958, p. 28, Mount 1963, p. 356) and domestic and feral cats on some islands in the Cedar Keys are known to prey on skink populations (Florida Fish and Wildlife Commission (FWC) 2013, p.5). The Cedar Key mole skink relies on dry, unconsolidated soils for movement, cover, and nesting, and it needs detritus, leaves, wrack, and other ground cover for shelter, temperature regulation, and food (insects and arthropods found in ground cover).

The Cedar Keys are a coastal complex of islands, tidal creeks, bays, and salt marsh, located along 10 miles (16 kilometers) of Florida's central Gulf of Mexico coast in Levy County. The Cedar Key mole skink has been found in small numbers on 10 islands of the Cedar

Keys archipelago (see figure 1, below). Eight of these islands are currently considered occupied (skink detections documented between 2000 to 2022), and two of these islands are considered to have uncertain status (skink detections documented prior to 1999, but not resurveyed) (Mount 1963, entire; Mount 1965 entire; FWC 2023, entire). In total, 215 Cedar Key mole skinks have been detected, with 62 individuals documented since 2000. Within this limited range, the Cedar Key mole skink is found most frequently in sand beach and coastal dune habitats. The estimated home range of a Cedar Key mole skink is approximately a 328-ft (100-meter) radius (Service 2023, p. 12).

Figure 1—Distribution and occurrences of the Cedar Key mole skink.

The Cedar Keys archipelago is a relatively small coastal ecosystem of 30 or more, mostly undeveloped islands of varying size and elevations. Of the eight current islands with known Cedar Key mole skink occurrence, only one island, Airstrip Island, is developed. Deer Island, also occupied by the Cedar Key mole skink, is privately owned with one dwelling and could be further developed with a small number of (off-the-grid) dwellings. Way Key, the largest island within the Cedar Keys, where the City of Cedar Key is located, is mostly developed, but the Cedar Key mole skink population status there is uncertain. The remaining islands with known populations of the Cedar Key mole skink are undeveloped and largely protected as part of the Cedar Keys National Wildlife Refuge. There are other islands of the Cedar Keys archipelago that contain suitable habitat and soils for the Cedar Key mole skink, but they have unknown occupancy due to lack of survey efforts. Many of these islands are also protected as conservation lands, and some are privately owned (all or in part) but remain undeveloped.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, we issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). On the same day, we published a final rule revising our protections for endangered species and threatened species at 50 CFR 17 (89 FR 23919). These final rules are now in effect and are incorporated into the current regulations.

The Act defines a ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis, which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M–37021, January 16, 2009; ''M-Opinion,'' available online at *https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf*). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the Cedar Key mole skink's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the subspecies to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years);

redundancy is the ability of the subspecies to withstand catastrophic events (for example, droughts, large pollution events); and representation is the ability of the subspecies to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, the subspecies' viability will increase with increases in resiliency, redundancy, and representation. Using these principles, we identified the subspecies' ecological requirements for survival and reproduction at the individual, population, and subspecies levels, and described the beneficial and risk factors influencing the subspecies' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the subspecies' individual and population life-history needs. The next stage involved an assessment of the historical and current condition of the subspecies' demographics and habitat characteristics, including an explanation of how the subspecies arrived at its current condition. The final stage of the SSA involved making predictions about the subspecies' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of the subspecies to sustain populations in the wild over time, which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R4–ES–2024–0053 on *https://www.regulations.gov* and at *https://www.fws.gov/office/florida-ecological-services/library.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the subspecies and its resources, and the threats that influence the subspecies' current and future condition, in order to assess the subspecies' overall viability and the risks to that viability.

Subspecies Needs

The SSA report contains a detailed discussion of the Cedar Key mole skink's individual and population requirements (Service 2023, pp. 2–16); we provide a summary here. Based upon the best available scientific and commercial information, and acknowledging existing ecological uncertainties, the resource and demographic needs for breeding, feeding, sheltering, and dispersal of the Cedar Key mole skink are characterized as:

- Beaches, dunes, and coastal hammock habitats that provide ground cover in the form of leaf litter and wrack material, that the Cedar Key mole skink needs for nesting, arthropod and insect food sources, and cover; and
- Dry, loose, sandy, permeable, or friable (crumbly in texture) soils for digging of nest cavities and movement, as all portions of the Cedar Key mole skink's life cycle occur within or on the surface of the soil.

The Cedar Key mole skink's abundance, distribution, and life-history behaviors (*e.g.,* nesting, breeding) are limited to, and defined by, the availability of these resources in the areas of beach, dune, and coastal hammock habitats.

Threats

The main threats affecting the Cedar Key mole skink are related to shifts in climate as a result of increasing greenhouse gas emissions. Sea level rise, more frequent tidal flooding (increase of tides above the mean high tide), and increasing intensity of storm events (such as hurricanes) are the predominant threats to the Cedar Key mole skink and its habitat. We also evaluated existing regulatory mechanisms and ongoing conservation measures. In the SSA report, we considered additional threats: habitat loss and degradation that result from development and habitat disturbance; overutilization due to recreational, educational, and scientific use; disease; oil spills; and nonnative species. We concluded that, as indicated by the best available scientific and commercial information, these additional threats are currently having little to no impact on the Cedar Key mole skink, and thus their overall effect now and into the future is expected to be minimal. For full descriptions of all threats and how they impact the Cedar Key mole skink, please see the SSA report (Service 2023, pp. 16–31).

Climate Change

The predominant threats currently affecting the Cedar Key mole skink and its habitat are the rapid and intense shifts in climate occurring as a result of increasing greenhouse gas emissions. The entire Cedar Key archipelago is being affected by sea level rise, more frequent high tide flooding, and increased intensity of tropical storms and hurricanes. In the SSA report and this proposed rule, we discuss the effects of climate change on the Cedar Key mole skink in terms of increasing sea level rise, more frequent tidal flooding, and increased intensity of storm events.

Sea level rise—Within Florida, sea level rise is increasing at a faster rate than globally, making this subspecies especially vulnerable to impacts from sea level rise across its entire range (Carter et al. 2014, pp. 401–403; Park and Sweet 2015, entire; Sweet et al. 2017, p. 25). Accelerated sea level rise in Florida is attributed to shifts in the Florida Current due to added ocean mass brought on by the melting Antarctic and Greenland ice packs and thermal expansion from warming oceans (Park and Sweet 2015, entire; Rahmstorf et al. 2015, entire; Deconto and Pollard 2016, p. 596; Sweet et al. 2017, p. 14). Tidal gauges around Florida have shown approximately 25 centimeters (10 inches) of sea level rise since 1920. However, from 2006 to 2016 alone, there was a 12-centimeter (5-inch) sea level rise in southeast Florida (Sweet et al. 2017, p. 41; *SeaLevelRise.org* 2023, p. 1).

The majority of the Cedar Keys are low-lying sandy islands (see table 1, below), making them highly susceptible to erosion and flooding, and at risk of inundation and saltwater intrusion (Florida Department of Environmental Protection (FDEP) 2012, p. 12; U.S. Geological Survey (USGS) 2017, unpaginated). As sea level rises, Cedar Key mole skink habitat becomes inundated and unusable due to saturation of the soils or direct loss of habitat. The Cedar Key mole skink utilizes coastal beach habitat and coastal maritime hammock habitat during all of its life stages, making it especially vulnerable to current and projected sea level rise across its entire range. The effects of rising sea levels (loss of beach habitat, coastal flooding, and saltwater intrusion) are currently being experienced along Florida's Gulf Coast, including the Cedar Keys, and these effects are projected to continue (see table 1, below; Carter et al. 2014, pp. 398–400, 403; Wadlow 2016, entire; *SeaLevelRise.org* 2023, p. 1).

High tide flooding—One of the most noticeable impacts from sea level rise is the increased frequency of high tide flooding (Sweet et al. 2020, p. v). High tide flooding begins when coastal water levels exceed the mean higher high-water level (increase of tides above the mean high tide) (Sweet et al. 2014, entire). Frequent flooding above the high tide line causes flooded areas to become unusable to the Cedar Key mole skink (individuals cannot easily move through wet sand; individuals or nests will be washed away). High tide flooding can result in beach erosion and

salinization of soils, even if high tide flooding is infrequent (Saha et al. 2011a, pp. 181–182; Saha et al. 2011b, pp. 82–84; Sweet et al. 2020, pp. 1–4). Over time, habitat that is frequently impacted by high tide flooding is degraded as it becomes more intertidal, even prior to sea level rise inundation. Thus, high tide flooding is likely to result in removal of habitat, displacement of individuals landward to less suitable habitat, and potential loss of individual Cedar Key mole skinks due to drowning. Cedar Key mole skink populations are especially vulnerable when these impacts occur repeatedly without time to recover. Currently, the national high tide flooding frequency is estimated at 5 days per year and is projected to increase to 7 to 15 days by 2030, and to 25 to 75 days by 2050, in much of coastal Florida and the Cedar Keys (Sweet et al. 2021, pp. 9–10).

Storm events—Habitat for the Cedar Key mole skink can be degraded or removed by extreme storm events such as hurricanes, storm surges, and floods. Storm events are a natural part of the Cedar Keys ecosystem and can provide indirect benefits to Cedar Key mole skink habitat. Storms can deposit wrack and other debris that provide habitat for the subspecies' prey and shelter for Cedar Key mole skinks. However, hurricane activity has increased since the Atlantic Multi-Decadal Oscillation (the natural variability of the sea surface temperature in the Atlantic Ocean) went into its warm phase around 1992 (National Oceanic and Atmospheric Administration (NOAA) 2019, p. 1), and the increased intensity of storms over the last several decades has likely had negative impacts on the Cedar Key mole skink's resiliency, representation, and redundancy.

Information on direct impacts of hurricanes to the Cedar Key mole skink are lacking. However, there is information on impacts to habitat from recent hurricanes and other strong storms that have occurred in the region. Hurricane Hermine (Category 1) passed by the Cedar Keys in September 2016, causing widespread overwash and erosion to beach and coastal hammock habitats. Vegetation became buried, and the ground cover was greatly reduced from the resulting storm surge (Enge et al. 2017, entire). As a result of Hurricane Hermine, the beachfront of North Key lost most of the vegetative cover required for the Cedar Key mole skink (Enge et al. 2017, entire). In August 2023, Hurricane Idalia (Category 3) made landfall in the Cedar Keys and caused a storm surge of up to 7 feet (2.1 meters), causing complete overwash of many islands. For example, Seahorse Key lost 20 to 30 feet (6 to 9 meters) of beach and the remaining sand was left compacted (Thomas 2023, pers. comm.). Overtime, the vegetative cover will likely return to beach and coastal hammock habitats, but when these storm impacts occur repeatedly, there is less time for Cedar Key mole skink populations to recover from any single event (*e.g.,* temporary inundation of soils, loss of shelter and food resource, drowning), thus reducing overall resiliency when impacts by extreme and repetitive storm events occur (Service 2017, p. 7).

The severity and duration of hurricane impacts to the Cedar Key mole skink and its habitat vary based on the intensity and scale of storm events. Localized impacts can vary greatly depending upon not only the strength of the storm but the direction of its approach and how quickly it moves through the area. Storm surges and their intensity can also vary depending on location. The increased intensity of storm events over the last several decades has likely led to a reduction in Cedar Key mole skink populations, thereby reducing overall population resiliency and the subspecies' redundancy.

In summary, impacts from climate change have the potential to reduce survival of the Cedar Key mole skink at the individual, population, and subspecies level. Sea level rise can degrade existing habitat that supports the Cedar Key mole skink, reducing the habitat features that the subspecies needs and thus reducing population resiliency. Increased high tide flooding and increased intensity of storm events have the potential to further degrade Cedar Key mole skink habitat. Increased high tide flooding and storm events also have the potential to kill skinks directly or to reduce individual survival, which could then lead to a reduction in population resiliency and the subspecies' redundancy. An increase in the intensity of storms or a direct hit from a strong hurricane could significantly reduce subspecies abundance (reducing population resiliency) and potentially extirpate populations (limiting redundancy). There are no regulatory mechanisms or conservation measures that address the impacts of sea level rise, high tide flooding, or increased intensity of storm events.

Conservation Efforts and Regulatory Mechanisms

Several local, State, and Federal government plans provide conservation actions that directly or indirectly benefit the Cedar Key mole skink and its habitat. Levy County has several plans for coastal management, emergency management, and land use management, including their Comprehensive Plan (Frank et al. 2014, entire; Levy County 2017, entire). Levy County has policies to limit incompatible future growth and development in coastal areas subject to flooding (Frank et al. 2014, p. 69), which are areas where the Cedar Key mole skink's habitat occurs. The Comprehensive Plan also contains coastal setback guidelines, standards for construction near or on the shoreline, and policies for protecting environmentally sensitive land (Frank et al. 2014, p. 69; Levy County 2017, p. 13). The Levy County Code of Ordinances (Levy County 2023, pp. 6–12) requires the protection of environmentally sensitive lands and coordination with Florida Fish and Wildlife Commission and the Service regarding potential impacts to endangered or threatened species or their habitats.

The City of Cedar Key has a variety of land uses: residential, conservation, recreation, marsh, mixed use, commercial, and public (City of Cedar Key 2018, p. 145). City Code 4–3.2 states that ''the City shall protect native vegetation, including but not limited to trees, mangroves, and marsh grasses, and cooperate with Levy County in identifying, conserving, protecting or preserving unique vegetative communities in contiguous areas to assure that development does not degrade the environment, impair aesthetics, damage coastal resources or deny reasonable property rights and uses'' (City of Cedar Key 2018, p. 169). City Code 4–8.1 states, ''a minimum coastal construction setback line of 50 feet (15 meters) from the mean high-water line will be maintained on any land adjoining all surface waters. In addition to the 50 feet (15 meters) setback line, an additional setback may be required to protect water-dependent vegetation located landward of the coastal construction setback line'' (City of Cedar Key 2018, p. 172). These setbacks from beach habitat allow Cedar Keys mole skink habitat along the shoreline to remain intact. The city also has plans to manage and protect all ecological and wildlife communities (City of Cedar Key 2018, pp. 271–273).

The Florida Gulf Coast Mitigation Bank (Mitigation Bank) consists of approximately 1,587 acres (642 hectares) of habitat in Levy County owned and managed by the Mitigation Banking Group, Incorporated. The Mitigation Bank is characterized by coastal habitats, including maritime hammocks, coastal scrub, and both

freshwater and saltwater wetlands. The entire property is covered by a conservation easement. Habitat for several federally listed species (Florida salt marsh vole (*Microtus pennsylvanicus,* listed as *Microtus pennsylvanicus dukecampbelli*), Florida scrub-jay (*Aphelocoma coerulescens*), and wood stork (*Mycteria americana*)) is protected by the Mitigation Bank. Restoration and management activities include mechanical treatment, prescribed fire, and road removal to improve natural hydroperiods. Three of the proposed critical habitat units (see II. Critical Habitat, below) for the Cedar Key mole skink are located on Mitigation Bank property, and the protection and management of these areas will provide benefits to the Cedar Key mole skink.

Florida's Nature Coast Conservancy (Conservancy) is a nonprofit land trust dedicated to acquiring land for preservation, conservation, and/or public recreation. The Conservancy has protected at least 11 properties throughout the Cedar Keys and ensures sustainable land management protocols are in place for each. Two of the proposed critical habitat units (see II. Critical Habitat, below) for the Cedar Key mole skink are within the Conservancy's properties, and the protection and management of these areas will provide benefits to the Cedar Key mole skink.

The Cedar Key mole skink also occurs within three State Parks, including Cedar Key Museum State Park, Cedar Key Scrub Wildlife Management Area, and Cedar Key Scrub State Reserve. Active management of these parks provides indirect benefits to the Cedar Key mole skink by protecting and providing habitat through beach restoration and nourishment and nonnative plant and animal control. Part of the active management of these parks includes the Florida Parks Service conducting nonnative plant and animal control that benefits Cedar Key mole skinks.

The Cedar Key mole skink occurs within two National Wildlife Refuges: the Lower Suwanee and Cedar Keys National Wildlife Refuges. Specific management or conservation objectives for the Cedar Key mole skink are not identified in the management plans for these National Wildlife Refuges lands; however, ongoing management activities, including habitat restoration and nonnative species control, provide benefits to the Cedar Key mole skink and its habitat.

Cumulative Effects

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the subspecies. To assess the current and future condition of the subspecies, we evaluate the effects of all the relevant factors that may be influencing the subspecies, including threats and conservation efforts. Because the SSA framework not only considers the presence of the factors, but to what degree they collectively influence risk to the entire subspecies, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

Current Condition

Resiliency

Due to the semi-fossorial and cryptic nature of the Cedar Key mole skink, abundance data are lacking, and no population trend data exist for this subspecies. There are also no data available regarding the population structure or demographics of the Cedar Key mole skink. There have been 215 detections of Cedar Key mole skinks on 10 islands, with 62 individuals documented on 8 islands since 2000. Two of these island populations are considered to have uncertain status given the last detections were in 1988 and 1993. In total, 191 acres (77 hectares) of preferred habitats (this includes sand, beach, and coastal dune habitats) are currently estimated on all ten islands where Cedar Key mole skinks have been detected.

Table 1, below, provides a summary of the projected magnitude of change in resiliency for populations of the Cedar Key mole skink for the 3-foot (ft) (0.9-meter) sea level rise scenario in 2040. In the ''Population status'' column of table 1, ''current'' means occupied in 2000–2022, and ''uncertain'' means occupied prior to 1999. In the ''Year 2040 (3-ft sea level rise)'' column, we use symbols as follows:

- ↓ means a slight decrease in population resiliency (more than 10 percent but less than or equal to 50 percent);
- ↓↓ means a moderate decrease in population resiliency (more than 50 percent but less than or equal to 75 percent);
- ↓↓↓ means a large decrease in population resiliency (more than 75 percent but less than or equal to 90 percent); and
- X means extirpated, based on more than 90 percent of the potential habitat being impacted regardless of population resiliency.

TABLE 1—PROJECTED MAGNITUDE OF CHANGE IN RESILIENCY FOR POPULATIONS OF THE CEDAR KEY MOLE SKINK FOR THE 3-FT SEA LEVEL RISE SCENARIO IN THE NEAR FUTURE

[Year 2040]

Island group	Current habitat (acres) *	Island elevation (feet)	Population status	Number of skinks	Year 2040 (3-ft sea level rise)
Airstrip Island	1	15	current	15	↓
Atsena Otie Key	26	20	current	2	X
Cedar Point	8	10	current	2	↓↓
Deer Island	9	10	current	2	X
Dog Island	2	10	uncertain	0	X
North Key	49	15	current	22	X
Scale Key	24	5	current	1	↓
Seahorse Key	55	50	current	17	↓↓↓
Snake Key	14	5	current	1	X
Way Key	3	35	uncertain	0	↓
Total	191			62	

* Totals may not sum due to rounding.

To date, sea level rise has resulted in the direct loss of habitat, as beaches have become inundated for long periods of time. Repeated high tide flooding has resulted in additional loss of habitat as frequently flooded areas become unusable to the Cedar Key mole skink (individuals cannot easily move through wet sand; individuals or nests are washed away). Within the near term (by 2040 or sooner), five of the eight current populations are projected to lose 75 to 90 percent or more of preferred habitat due to continued increases in sea level rise and high tide flooding (table 1). In addition, recent hurricanes (Hurricane Hermine in 2016 and Hurricane Idalia in 2023) have resulted in direct loss of habitat as well as higher storm surge and coastal flooding that has further reduced availability and quality of Cedar Key mole skink habitat. Future projections indicate an increase in the severity of these storms.

Given the current impacts of sea level rise, high tide flooding, and hurricanes, and given the limited available habitat, the relatively low number of individuals documented, and the potential for repeated catastrophic storm events, the overall resiliency of the Cedar Key mole skink is considered low.

Redundancy

Redundancy is the ability of a species to withstand catastrophic events. In the Cedar Keys, tropical storms and hurricanes are regular and common events. However, catastrophic events may include particularly strong or intense hurricanes or storms and the resulting winds, waves, and storm surges associated with these events. Increased intensity of such storms associated with climate change could further reduce the ability of Cedar Key mole skink populations to recover and could cause catastrophic impacts to the subspecies.

Land mass in the Cedar Keys in general is limited, thus providing less redundancy or ''backup'' for the available habitat such that natural expansion of the subspecies is not possible. Given its small geographic range (eight islands within a length of 10 miles (16 kilometers)), the entire subspecies is vulnerable to potential catastrophic events such as a storm or hurricane that would likely impact all islands.

Representation

The Cedar Key mole skink has limited representation. There is no evidence of morphological or behavioral differences (or ''types'') among populations. The Cedar Key mole skink occurs across a narrow geographic and ecological range; there is no variation in habitat types across distance or elevations. Furthermore, dispersal of individuals across islands is considered very rare, and genetic evidence shows little to no sign of interbreeding between the identified island populations (Parkinson et al. 2016, entire).

As part of the SSA, we also developed sea level rise and high tide flooding future condition scenarios projected out until the year 2100. Our scenarios included intermediate, intermediate-high, and high scenarios, which are aligned with emissions-based, conditional probabilistic and global model projections of global mean sea level rise (Service 2023, p. 42). Because we determined that the current condition of the Cedar Key mole skink is consistent with an endangered species (see Determination of Cedar Key Mole Skink's Status, below), we are not presenting the detailed results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2023, pp. 41–50) for the full analysis of future scenarios.

Determination of Cedar Key Mole Skink's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We presented summary evaluations of the primary threats analyzed in the SSA report including climate change, specifically sea level rise, increased high tide flooding, and increased intensity of storm events (Factor E). We also evaluated existing regulatory mechanisms (Factor D) and ongoing conservation measures. In the SSA report, we also considered additional threats: habitat loss and degradation that results from development (Factor A); overutilization due to recreational, educational, and scientific use (Factor B); disease (Factor C); oil spills (Factor E); and nonnative species (Factor E). We concluded that, as indicated by the best available scientific and commercial information, these additional threats currently have little to no impact on the Cedar Key mole skink and its habitat such that the overall effect now and into the future is expected to be minimal. However, we consider each of these threats in the determination for the subspecies, because although they may have low impacts on their own, combined with impacts of other threats, they could further reduce the already low number of Cedar Key mole skinks.

Status Throughout All of Its Range

After evaluating threats to the subspecies and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we have determined that the Cedar Key mole skink has limited resiliency, redundancy, and representation to maintain viability over time. Only 62 skinks have been documented on eight islands in the last 20 years. Given the historical and current impacts from sea level rise, high tide flooding, and hurricanes, habitat for the Cedar Key mole skink is limited. In total, approximately 191 acres (77 hectares) of preferred habitat are currently estimated on islands where the Cedar Key mole skink has been detected. Because the subspecies is limited to a relatively small area (eight islands within a length of 10 miles (16 kilometers)), the subspecies is considered to have little redundancy. A single catastrophic event, such as a severe storm or hurricane, could result in the extinction of the subspecies. Additionally, given the subspecies' narrow range and limited-to-no island dispersal capabilities, we consider the subspecies to have low representation. The current and future projected increase in sea level rise, high tide flooding, and storm events exacerbates the current condition for the Cedar Key mole skink. We do not find that the Cedar Key mole skink meets the Act's definition of a threatened species because it already has shown declines in available habitat, has limited abundance, and its population's exhibit low resiliency. Because of the Cedar Key mole skink's low redundancy and limited representation, the subspecies is vulnerable to catastrophic storm events. Thus, after assessing the best available information, we conclude that the Cedar Key mole skink is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the Cedar Key mole skink is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the Cedar Key mole skink warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the Cedar Key mole skink meets the Act's definition of an endangered species. Therefore, we propose to list the Cedar Key mole skink as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, foreign governments, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their ranges may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this subspecies is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Florida would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Cedar Key mole skink. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance.*

Although the Cedar Key mole skink is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this subspecies. Additionally, we invite you to submit any new information on this subspecies whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled, ''Interagency Cooperation,'' and it mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any 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 critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification,

action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the Cedar Key mole skink that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the Service as well as actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, and the Service's implementing regulations codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or to cause to be committed any of the following acts with regard to endangered wildlife: (1) import into, or export from, the United States; (2) take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) within the United States, within the territorial sea of the United States, or on the high seas; (3) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such wildlife that has been taken illegally; (4) deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or (5) sell or offer for sale in interstate or foreign commerce. Certain exceptions to these prohibitions apply to employees or agents of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits for endangered wildlife are codified at 50 CFR 17.22, and general Service permitting regulations are codified at 50 CFR part 13. With regard to endangered wildlife, a permit may be issued: for scientific purposes, for enhancing the propagation or survival of the species, or for take incidental to otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

II. Critical Habitat

Background

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

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

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

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

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

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

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 each Federal action agency 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 designated 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 also 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. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 geographical 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 data available, those physical or biological features that are essential to the conservation of the species (such as

space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in 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.

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

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

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of 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 ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. 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 the 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 those planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

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

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Cedar Key mole skink from studies of the subspecies' habitat, ecology, and life history as described above. Additional information can be found in the SSA report (Service 2023, entire; available on *https://www.regulations.gov* under Docket No. FWS–R4–ES–2024–0053). We have determined that the following physical or biological feature is essential to the conservation of the Cedar Key mole skink: Natural habitats (including, but not limited to, beaches, dunes, and coastal hammocks) along the coast or within the interior of the Cedar Keys that contain:

(a) Suitable soils (dry, loose, sandy, permeable, or friable soils) for movement and nesting; and

(b) Sufficient, appropriate ground cover (including, but not limited to, tidal wrack deposited above the mean high-water line, leaf litter, and vegetative debris) for protection from predators and temperature extremes, sources of food (*e.g.,* insects and arthropods), and areas for reproduction.

Special Management Considerations or Protection

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

considerations or protection. The feature essential to the conservation of the Cedar Key mole skink may require special management considerations or protection to reduce threats posed by climate change (sea level rise, more frequent tidal flooding, and increasing intensity of storm events); recreational activities (beach cleaning to remove wrack and other vegetative material); and human-caused disasters and response activities. For an in-depth discussion of threats, see Summary of Biological Status and Threats, above, and the SSA report (Service 2023, pp. 16–31).

Management activities that could ameliorate these threats include (but are not limited to): maintaining and protecting suitable habitat within occupied areas; identifying areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implementing nourishment or restoration/protection activities; conducting restoration and debris cleanup after storms, while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establishing protocols and agreements to allow storm-enhanced habitats (storms can create berms and dunes and can redeposit sand and wrack, which are all beneficial to the Cedar Key mole skink) to persist; coordinating with landowners and local managers to implement best management practices during regular beach cleaning activities; conducting public outreach and education at all occupied areas; and preparing disaster response plans and conducting trainings that consider Cedar Key mole skinks and their habitat.

Criteria Used To Identify Critical Habitat

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

We are proposing to designate critical habitat in areas within the geographical area occupied by the subspecies at the time of listing. We also are proposing to designate specific areas outside the geographical area occupied by the subspecies because we have determined that those areas are essential for the conservation of the subspecies. By the year 2040, five out of eight islands currently occupied by the Cedar Key mole skink are projected to lose 75 to 90 percent or more of their preferred habitat under the lowest projected sea level rise scenario of 3.0 feet (0.9 meters) (see table 1, above). We identified suitable habitat on islands within the Cedar Keys that meet the definition of critical habitat and are considered essential to provide for subspecies redundancy into the future. These islands are considered areas with high resiliency to sea level rise (*i.e.,* islands with higher elevation that are projected to have habitat remaining at 5.0 feet (1.5 meters) of sea level rise)). These unoccupied islands contain the physical and biological feature essential to the subspecies and are, therefore, considered habitat for the subspecies. All units (both occupied and unoccupied) are within the range of the subspecies and contain the physical and biological feature essential to the conservation of the subspecies.

We developed the following criteria for determining the specific areas that contain the physical and biological feature essential to the conservation of the subspecies:

(1) Genetic differentiation and geographic extent—To maintain viability in populations of Cedar Key mole skink that represent and conserve any genetic variation that may exist and habitat on each of the eight islands that has current populations (see *Current Condition,* above), critical habitat units should encompass all current populations ensuring that the entire range of the Cedar Key mole skink is represented.

(2) Climate change resilience—To provide sufficient amounts of suitable habitat for the Cedar Key mole skink predicted to be less affected by sea level rise (Service 2023, pp. 41–50), critical habitat should include islands that are less vulnerable to sea level rise within the Cedar Keys.

(3) Structural connectivity—To maintain, enhance, and establish connectivity within Cedar Key mole skink populations (see Summary of Biological Status and Threats, above), critical habitat units should incorporate corridors for connectivity, dispersal, and refuge areas during high tide flooding and storm events.

Sources of data used for the delineation of critical habitat units included:

(1) Confirmed presence data compiled in our Geographic Information System database from 1951 through 2022, and provided by multiple databases maintained by museums, universities, and State agencies in Florida; State agency reports; and numerous survey reports for projects throughout the subspecies' range.

(2) Habitat and land use cover types from the Cooperative Land Cover map (version 3.5) developed by the Florida Fish and Wildlife Conservation Commission and Florida Natural Areas Inventory (FWC and FNAI 2021, entire) determined to be suitable for the subspecies based on peer-reviewed articles on this subspecies or similar subspecies, and gray literature by researchers involved in wildlife biology and conservation activities.

(3) Levy County soil data layers from the U.S. Department of Agriculture's Natural Resources Conservation Service Web Soil Survey (USDA 2022, entire) determined to be suitable for the subspecies based on their official soil series descriptions.

(4) Shoreline data representing the mean high-water line from the National Oceanic and Atmospheric Administration's Office of Coastal Management (*https://shoreline.noaa.gov/data/index.html*).

(5) Global and regional sea level rise scenarios for the United States from the National Oceanic and Atmospheric Administration's National Ocean Service Center for Operational Oceanographic Products and Services (Sweet et al. 2022, entire).

(6) Environmental Systems Research Institute's (ESRI's) Aeronautical Reconnaissance Coverage Geographical Information System (ArcPro) online basemap aerial imagery (2018 to 2020) to cross-check Cooperative Land Cover data and ensure the presence of the physical or biological feature.

For areas within the geographical area occupied by the Cedar Key mole skink at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) We determined occupied areas for this subspecies by reviewing the best available scientific and commercial data on occurrence records. As discussed above under I. Proposed Listing Determination, Background, Cedar Key mole skinks are cryptic and adapted to living underground. Because of their cryptic nature, we determined that, if suitable habitat containing the physical and biological feature is still present in an area where a Cedar Key mole skink was detected between 2000 and 2022, there is a high likelihood that the subspecies is still present. Therefore, based on the best available information, we defined occupied areas as islands with at least one current occurrence record ranging from 2000 to 2022.

(2) We selected all suitable habitat that contains the physical or biological feature as determined using the data sources listed above on currently occupied islands. When the exact location of an occurrence record could not be determined for an island (a verified record, but only general location information, such as the name of the island, was provided), or the location was accurate but in unsuitable habitat (developed areas), all suitable habitat on the island was selected.

(3) We selected additional suitable habitat within a 328-ft (100-meter) radius (the estimated home range of Cedar Key mole skink; Service 2023, p. 12) on undeveloped islands to include corridors for greater dispersal due to population expansions, localized resource limitations, and sea level rise, storm surge, or tidal flooding refugia areas for the subspecies (*e.g.,* for undeveloped islands, the full island was included).

(4) On developed islands, we constrained the boundary of a critical habitat unit to areas of contiguous suitable habitat. Offshore boundaries of the critical habitat unit were delineated using a simplified buffered shoreline to include the full extent of each island complex, or to the farthest offshore feature (*i.e.,* habitat boundary, mean high-water line, or shoreline visible in aerial imagery).

For areas outside the geographical area currently occupied by the subspecies at the time of listing, we looked at islands considered recently occupied by, or that have an uncertain status (documented before 1999) for, the Cedar Key mole skink. We analyzed these uncertain status islands and all other islands within the Cedar Keys for those that contain suitable habitat and evaluated each site for its potential conservation contribution based on quality of habitat, vulnerability to climate change (specifically sea level rise and high tide flooding), and existing protections and management of the habitat and sites. Based on these criteria, we identified nine islands that contain appropriate habitat for the subspecies and are essential for the conservation of the subspecies but would be considered unoccupied at the time of listing. For areas outside the geographical area occupied by the Cedar Key mole skink at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

(1) To ensure unoccupied areas would provide skink habitat into the future, we analyzed impacts to potential habitat on each island in the Cedar Keys and included only those that are projected to still have habitat remaining after 5.0 feet (1.5 meters) of sea level rise and high tide flooding by the year 2080 (Service 2023, p. 47).

(2) We selected all suitable habitat that contains the physical or biological feature as determined using Criteria (2)–(4) outlined above for occupied units.

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

Seventeen units are proposed for designation based on the physical or biological feature being present to support the Cedar Key mole skink's life-history processes. All units contain the identified physical or biological feature and support multiple life-history processes.

The proposed critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R4–ES–2024–0053 and on our internet site at *https://www.fws.gov/office/florida-ecological-services.*

Proposed Critical Habitat Designation

We are proposing to designate approximately 2,713 acres (1,098 hectares) in 17 units as critical habitat for the Cedar Key mole skink (see table 2, below). The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Cedar Key mole skink. The 17 areas we propose as critical habitat are: (1) Live Oak Key, (2) Cedar Point, (3) Scale Key, (4) Dog Island, (5) Atsena Otie Key, (6) Snake Key, (7) Seahorse Key, (8) North Key, (9) Airstrip Island, (10) Way Key South, (11) Way Key North, (12) Richards Island, (13) Seabreeze Island, (14) Shell Mound, (15) Raleigh and Horse Islands, (16) Deer Island, and (17) Clark Islands. Most of the units contain highly dynamic barrier beaches and intertidal seashore. This area has the potential to vary year-to-year. In other words, the precise location of the physical and biological feature in some locations may shift over time somewhat because of the intrinsically dynamic nature of shorelines and due to sea level rise and high tide flooding. Table 2 shows the proposed critical habitat units and the approximate area of each unit.

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE CEDAR KEY MOLE SKINK

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

Unit	Occupancy	Ownership * in acres [hectares]					Total area * in acres [hectares]
		Federal	State	Local	Private	Other **	
1. Live Oak Key	No	46 [19]	0	0	49 [20]	14 [6]	109 [44]
2. Cedar Point	Yes	26 [11]	0	0	15 [6]	0	41 [17]
3. Scale Key	Yes	95 [38]	0	0	21 [8]	0	116 [47]
4. Dog Island	No	0	8 [3]	0	0	0	8 [3]
5. Atsena Otie Key	Yes	0	116 [47]	0	0	67 [27]	183 [74]
6. Snake Key	Yes	39 [16]	0	0	0	17 [7]	57 [23]
7. Seahorse Key	Yes	118 [48]	0	0	0	47 [19]	165 [67]
8. North Key	Yes	129 [52]	0	0	0	107 [43]	236 [95]

TABLE 2—PROPOSED CRITICAL HABITAT UNITS FOR THE CEDAR KEY MOLE SKINK—Continued

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

Unit	Occupancy	Ownership * in acres [hectares]					Total area * in acres [hectares]
		Federal	State	Local	Private	Other **	
9. Airstrip Island	Yes	0	0	19 [8]	10 [4]	0	29 [12]
10. Way Key South ..	No	0	44 [18]	0	0	0	44 [18]
11. Way Key North ...	No	0	9 [4]	15 [6]	0	0	24 [10]
12. Richards Island ..	No	86 [35]	0	0	0	19 [8]	105 [42]
13. Seabreeze Island	No	111 [45]	0	0	0	25 [10]	136 [55]
14. Shell Mound	No	167 [68]	194 [79]	0	688 [278]	0	1,050 [425]
15. Raleigh and Horse Islands.	No	171 [69]	0	0	5 [2]	0	176 [71]
16. Deer Island	Yes	8 [3]	0	0	69 [28]	36 [15]	113 [46]
17. Clark Islands	No	0	0	0	121 [49]	0	121 [49]
Total	.....	996 [403]	371 [150]	34 [14]	978 [396]	332 [134]	2,713 [1,098]

* Totals may not sum due to rounding.
** Includes suitable habitat of unknown or undefined ownership.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for the Cedar Key mole skink, below.

Unit 1: Live Oak Key

Unit 1 encompasses approximately 109 acres (44 hectares) of unoccupied habitat in Levy County and includes the entire island of Live Oak Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 46 acres (19 hectares) in Federal ownership, 49 acres (20 hectares) in private ownership, and 14 acres (6 hectares) in other ownership (undefined ownership). The entirety of Unit 1 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot (*Calidris canutus rufa*). Live Oak Key is approximately 2.5 miles (4 kilometers) northeast of Cedar Key within the Gulf of Mexico. The northern portion of the island is managed as the Florida Gulf Coast Mitigation Bank by a private entity and the southern portion is federally owned and managed by the Service as the part of the Cedar Keys National Wildlife Refuge.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 2: Cedar Point

Unit 2 encompasses approximately 41 acres (17 hectares) of occupied habitat in Levy County and includes the entire island of Cedar Point. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 26 acres (11 hectares) in Federal ownership and 15 acres (6 hectares) in private ownership. The entirety of Unit 2 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot. Cedar Point is approximately 1.7 miles (2.7 kilometers) northeast of Cedar Key within the Gulf of Mexico. The Service manages most of the island as the part of the Cedar Keys National Wildlife Refuge. The eastern portion is managed by a private entity as part of the Florida Gulf Coast Mitigation Bank.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 3: Scale Key

Unit 3 encompasses approximately 116 acres (47 hectares) of occupied habitat in Levy County and includes the entire island of Scale Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 95 acres (38 hectares) in Federal ownership and 21 acres (8 hectares) in private ownership. The entirety of Unit 3 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot. Scale Key is approximately 1 mile (1.6 kilometers) northeast of Cedar Key within the Gulf of Mexico. The Service manages most of the island as part of the Cedar Keys National Wildlife Refuge. Approximately 14 acres (6 hectares) of the eastern portion are owned by Florida's Nature Coast Conservancy, and 5 acres (2 hectares) of the northern portion are managed by a private entity as part of the Florida Gulf Coast Mitigation Bank.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow

storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 4: Dog Island

Unit 4 encompasses approximately 8 acres (3 hectares) of unoccupied habitat in Levy County and includes the entire Dog Island. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Although Dog Island is currently considered unoccupied, Cedar Key mole skinks were documented here in the past (Enge 2023, pers. comm.; FWC 2023, entire), and it is possible that they are still present.

Dog Island is approximately 1 mile (1.6 kilometers) to the east of Cedar Key within the Gulf of Mexico. Lands within this unit are entirely within State ownership. The entirety of Unit 4 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 5: Atsena Otie Key

Unit 5 encompasses approximately 183 acres (74 hectares) of occupied habitat in Levy County and includes the entire island of Atsena Otie Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 116 acres (47 hectares) in State ownership and 67 acres (27 hectares) in other ownership. Atsena Otie Key is approximately 1 mile (1.6 kilometers) south of Cedar Key within the Gulf of Mexico. The island is owned by the State of Florida and managed as part of the Cedar Keys National Wildlife Refuge through a memorandum of understanding (MOU) by the Service. The entirety of Unit 5 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 6: Snake Key

Unit 6 encompasses approximately 57 acres (23 hectares) of occupied habitat within Levy County and includes the entire island of Snake Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 39 acres (16 hectares) in Federal ownership and 17 acres (7 hectares) in other ownership. Snake Key is approximately 2.5 miles (4 kilometers) south of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge. The entirety of Unit 6 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 7: Seahorse Key

Unit 7 encompasses approximately 165 acres (67 hectares) of occupied habitat within Levy County and includes the entire island of Seahorse Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 118 acres (48 hectares) in Federal ownership and 47 acres (19 hectares) in other ownership. Seahorse Key is approximately 3 miles (5 kilometers) south and west of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge. The entirety of Unit 7 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 8: North Key

Unit 8 encompasses approximately 236 acres (95 hectares) of occupied habitat within Levy County and includes the entire island of North Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 129 acres (52 hectares) in Federal ownership and 107 acres (43 hectares) in other ownership. North Key is approximately 3 miles (4.8 kilometers) to the west of Cedar Key within the Gulf of Mexico. The island is

managed by the Service as part of the Cedar Keys National Wildlife Refuge. The entirety of Unit 8 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 9: Airstrip Island

Unit 9 encompasses approximately 29 acres (12 hectares) of occupied habitat within Levy County on the island of Way Key. Lands within this unit include approximately 19 acres (8 hectares) in local government ownership and 10 acres (4 hectares) in private ownership. This unit is composed of the following five separate sections with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies: Airstrip Island Beach, Cedar Key Airport, Airport Island, Piney Point, and Robert Cull Nature Preserve. Airstrip Island Beach is 5 acres (2 hectares) of private shoreline along Daughtry Bayou, encompassing sandy beach from mean higher high-water inland to dense vegetation, hardened structures, or roads, extending from the southern side of the Airport Road bridge to the south for approximately 0.5 miles (0.8 kilometers). Cedar Key Airport includes 16 acres (6 hectares) of unvegetated and vegetated sandy soils on the George T. Lewis Airport (also known as the Cedar Key Airport) that are owned by Levy County. Airport Island is a 2-acre (0.8-hectare), unnamed island southwest of the airport, which is also owned by Levy County. Piney Point is a 3-acre (1-hectare), privately owned, undeveloped, vacant lot on the western side of Piney Point south of the airport. The fifth section is 2 acres (0.8 hectares) of protected land known as the Robert Cull Nature Preserve at the terminus of Piney Point that are owned and managed by Florida's Nature Coast Conservancy. Approximately 9 acres (4 hectares) of Unit 9 overlap with proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 10: Way Key South

Unit 10 encompasses approximately 44 acres (18 hectares) of unoccupied habitat within Levy County on Way Key. This unit is a series of undeveloped disconnected islands south of Way Key that contain the physical or biological feature essential to the conservation of the subspecies. The largest island, located between the airport and the developed portion of Way Key, is projected to be more resilient to sea level rise (due to its relatively higher elevation) and is composed of coastal scrub habitat with a sandy shoreline fringe. Also included in this unit are several primarily sand islands that occur seaward of the main island. This unit is entirely in State ownership. Approximately 41 acres (17 hectares) of Unit 10 overlap with proposed critical habitat for the rufa red knot.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 11: Way Key North

Unit 11 encompasses approximately 24 acres (10 hectares) of unoccupied habitat within Levy County on Way Key. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 9 acres (4 hectares) in State ownership managed as the Cedar Key Museum State Park by the Florida Park Service, and 15 acres (6 hectares) in local government ownership managed as Cemetery Point Park by the City of Cedar Key. Although the unit is currently considered unoccupied, Cedar key mole skinks were documented here in the past (FWC 2023, entire), and it is possible that they are still present. Additionally, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 12: Richards Island

Unit 12 encompasses approximately 105 acres (42 hectares) of unoccupied habitat within Levy County and includes the entirety of Richards Island. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Richards Island is undeveloped and projected to be more resilient to sea level rise due to higher elevation. Lands within this unit include approximately 86 acres (35 hectares) in Federal ownership and 19 acres (8 hectares) in other ownership. Richards Island is approximately 3.3 miles (5.3 kilometers) northwest of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge. Approximately 43 acres (17 hectares) of Unit 12 overlap with proposed critical habitat for the rufa red knot.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the

subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 13: Seabreeze Island

Unit 13 encompasses approximately 136 acres (55 hectares) of unoccupied habitat within Levy County on Seabreeze Island. This unit is composed of protected lands with suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Seabreeze Island is undeveloped and projected to be more resilient to sea level rise. Lands within this unit include approximately 111 acres (45 hectares) in Federal ownership and 25 acres (10 hectares) in other ownership. Seabreeze Island is approximately 4 miles (6 kilometers) northwest of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Lower Suwannee National Wildlife Refuge. Approximately 8 acres (3 hectares) of Unit 13 overlap with proposed critical habitat for the rufa red knot.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 14: Shell Mound

Unit 14 encompasses approximately 1,050 ac (425 hectares) of unoccupied habitat within Levy County on Shell Mound. The unit contains higher elevation lands, is projected to be more resilient to sea level rise, and has suitable habitat containing the physical or biological feature essential to the conservation of the subspecies. This unit extends from Dennis Creek north to Ericson Creek. Lands within this unit include approximately 167 acres (68 hectares) in Federal ownership, 194 acres (79 hectares) in State ownership, and 688 acres (278 hectares) in private ownership. The unit includes portions of the Cedar Key Scrub State Reserve managed by the Florida Park Service and the Lower Suwannee National Wildlife Refuge managed by the Service.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 15: Raleigh and Horse Islands

Unit 15 encompasses approximately 176 acres (71 hectares) of unoccupied habitat within Levy County on Raleigh and Horse Islands. The unit includes undeveloped islands projected to be more resilient to sea level rise and contains suitable habitat with the physical or biological feature essential to the conservation of the subspecies. Lands within this unit include approximately 171 acres (69 hectares) in Federal ownership and 5 acres (2 hectares) in private ownership. The group of islands is approximately 6 miles (10 kilometers) northwest of Cedar Key within the Gulf of Mexico. The Service manages most of the islands as part of the Lower Suwannee National Wildlife Refuge.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

Unit 16: Deer Island

Unit 16 encompasses approximately 113 acres (46 hectares) of occupied habitat within Levy County and includes the entirety of Deer Island. The unit is composed of suitable habitat that contains the physical or biological feature essential to the conservation of the subspecies. Lands within the unit include approximately 8 acres (3 hectares) in Federal ownership, 69 acres (28 hectares) in private ownership, and 36 acres (15 hectares) in other ownership. Deer Island is approximately 7 miles (11 kilometers) northwest of Cedar Key within the Gulf of Mexico. The entirety of Unit 16 is included in, and thus overlaps with, proposed critical habitat for the rufa red knot.

The physical and biological feature in this unit may require special management considerations or protection to: identify areas where beach erosion is occurring or habitat is succeeding to mangrove swamp or other coastal wetlands due to sea level rise and implement renourishment or restoration/protection activities; conduct restoration and debris cleanup after storms while concurrently minimizing disturbance to Cedar Key mole skinks and their habitat; establish protocols and agreements to allow storm-enhanced habitats to persist; conduct public outreach and education; and prepare disaster response plans and conduct trainings that consider Cedar Key mole skinks and their habitat to address threats from climate change (*e.g.,* sea level rise, high tide flooding, and storm events) and human-caused disasters and response activities (*e.g.,* oil spills).

Unit 17: Clark Islands

Unit 17 encompasses approximately 121 acres (49 hectares) of unoccupied habitat within Levy County on the Clark Islands complex. The unit includes undeveloped islands projected to be more resilient to sea level rise. The entirety of the unit is privately owned. The Clark Islands are approximately 7 miles (11 kilometers) north-northwest of Cedar Key within the Gulf of Mexico.

Although it is currently considered unoccupied, this unit constitutes habitat for the subspecies because it contains the physical or biological feature necessary for the life history of the subspecies. This unit is essential for the conservation of the subspecies because it will provide habitat for potential reintroductions in the case of sea level rise and high tide flooding (Service 2023, pp. 41–50) or stochastic events (such as hurricanes) should other areas of suitable habitat be destroyed or the Cedar Key mole skink be extirpated from one of its currently occupied locations.

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 authorize, fund, 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.

Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation. Reinitiation of consultation is required and shall be requested by the Federal agency, where discretionary Federal involvement or control over the action has been retained or is authorized by law and: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management in certain circumstances).

Destruction or Adverse Modification of Critical Habitat

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires that our **Federal Register** notices ''shall, to the maximum extent practicable also include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken may adversely modify [critical] habitat, or may be affected by such designation.'' Activities that may be affected by designation of critical habitat for the Cedar Key mole skink include those that may affect the physical or biological features of the Cedar Key mole skink's critical habitat (see Physical or Biological Features Essential to the Conservation of the Species, above).

Exemptions

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

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (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. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each

category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

Executive Order (E.O.) 14094 supplements and reaffirms E.O. 12866 and E.O. 13563 and directs Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866 identifies four criteria when a regulation is considered a ''significant regulatory action'' and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million or more in any given year (section 3(f)(1) as amended by E.O. 14094). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for the Cedar Key mole skink is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Cedar Key mole skink (IEc 2023, entire). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether the designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our economic analysis of the proposed critical habitat designation for the Cedar Key mole skink and is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Cedar Key mole skink, first we identified, in the IEM dated August 22, 2023, probable incremental economic impacts associated with the following categories of activities: (1) residential and commercial development; (2) construction activities such as road and bridge construction and maintenance; (3) habitat management activities (such as beach nourishment, shoreline armoring, nonnative species control (including mechanical or herbicide applications), and prescribed fire); and (4) recreational activities and associated developments (such as campgrounds, trails, and visitor facilities), management activities (such as beach raking or other cleaning methods to remove wrack and debris), and airport management activities. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the subspecies, in areas where the Cedar key mole skink is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the subspecies. If we list the subspecies and also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if

the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the subspecies being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the Cedar Key mole skink's critical habitat. Because the designation of critical habitat for the Cedar Key mole skink is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the subspecies being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological feature identified for critical habitat are the same features essential for the life requisites of the subspecies, and (2) any actions that would likely adversely affect the essential physical or biological feature of occupied critical habitat are also likely to adversely affect the subspecies itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this subspecies. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Cedar Key mole skink totals approximately 2,713 acres (1,098 hectares) in 17 units in Levy County, Florida (see Proposed Critical Habitat Designation, above). Land ownership across the units includes Federal lands (37 percent), State lands (14 percent), local lands (1 percent), private lands (36 percent), and lands with unknown/undefined ownership (12 percent). Eight of the 17 units are currently occupied by the Cedar Key mole skink; the remaining 9 units are not known to be currently occupied. Approximately 42 percent of the proposed critical habitat for the Cedar Key mole skink overlaps with currently proposed critical habitat for the rufa red knot. Further, 100 percent of the proposed critical habitat for the Cedar Key mole skink intersects with existing ranges for six federally listed species (IEc 2023, p. 8).

When an action is proposed in an area of designated critical habitat, and the proposed activity has a Federal nexus, the need for section 7 consultation is triggered. Any incremental costs associated with consideration of potential effects to the critical habitat are a result of this consultation process. For all occupied areas, the economic costs of critical habitat designations would most likely be limited to additional administrative efforts to consider adverse modification in section 7 consultations, as the listing of the subspecies is being proposed concurrently with critical habitat designation, and all occupied units would still need to undergo section 7 consultation due to listing regardless of critical habitat designation. While this additional analysis would require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. For the unoccupied units, section 7 consultations would not occur if not for the presence of critical habitat, so additional costs would occur. In unoccupied habitat, the incremental cost associated with a new consultation considering only adverse modification during technical assistances, informal, formal, and programmatic consultations are estimated to be $1,300, $8,000, $17,000, and $31,000, respectively (IEc 2023, p. 18). These estimates assume that consultation would not occur in the absence of critical habitat designation. In total, the estimated annual, incremental administrative costs for a Cedar Key mole skink critical habitat designation are estimated at $9,000 annually (IEc 2023, p. 19). Overall, a critical habitat designation for the Cedar Key mole skink is unlikely to generate costs or benefits exceeding $200 million in a single year. Because of the relatively small size of the critical habitat designation, the landownership (Federal, State, county, or private) of the proposed critical habitat units, the amount of land that is already being managed for conservation, and the significant overlap with the rufa red knot's proposed critical habitat, the numbers of section 7 consultations expected annually are modest (approximately 1 formal, 12 informal, and 5 technical assistance efforts annually across the designation) (IEc 2023, p. 15).

Potential private property value effects are possible due to public perception of impacts to private lands. The designation of critical habitat may cause some developers or landowners to perceive that private lands will be subject to use restrictions or litigation from third parties, resulting in costs. However, due to the speculative nature of this perception, costs are not able to be quantified. Regardless, only 36 percent of the proposed critical habitat designation is privately owned land, leading to nominal incremental costs arising from changes in public perception of lands included in the designation.

Incremental costs may occur outside of the section 7 consultation process if the designation of critical habitat triggers additional requirements or project modifications under State or local laws, regulations, or management strategies. These types of costs typically occur if the designation increases awareness of the presence of the subspecies or the need for protection of its habitat. Given that the Cedar Key mole skink is covered by existing State protection plans, project proponents may already be aware of the presence of the subspecies. For example, the Cedar Key mole skink is included in the State of Florida's State Wildlife Action Plan as a species of greatest conservation need. The subspecies is further protected through habitat management and conservation under Florida State Park management plans. Therefore, designating critical habitat is unlikely to provide information to State or local agencies that would result in new regulations or actions (IEc 2023, p. 20).

We are soliciting data and comments from the public on the economic analysis discussed above (see Information Requested, above). During the development of a final designation, we will consider the information presented in the economic analysis and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this subspecies.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section

4(a)(3)(B)(i) of the Act, then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, we must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) of the Act requires us to consider those impacts whenever we designate critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Cedar Key mole skink are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as safe harbor agreements (SHAs), candidate conservation agreements with assurances (CCAAs), or ''conservation benefit agreements'' or ''conservation agreements'' (CBAs) (CBAs are a new type of agreement replacing SHAs and CCAAs in use after April 2024 (89 FR 26070; April 12, 2024)) or HCPs—or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

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

In preparing this proposal, we have determined that no HCPs or other management plans for the Cedar Key mole skink currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation, and, thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through this proposed rule's public comment period (see **DATES** and Information Requested, above) we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

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

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order (E.O.) 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open

exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

E.O. 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this proposed rule is not significant.

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

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

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

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

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

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects ''to the extent permitted by law'' when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a ''significant energy action'' as an action that (i) is a significant regulatory action under E.O. 12866 or any successor order; and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or E.O. 14094 (88 FR 21879; April 11, 2023). Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

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

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

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

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to 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 proposed 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. Therefore, a small government agency plan is not required.

Takings—Executive Order 12630

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

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the Federal government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

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

Civil Justice Reform—Executive Order 12988

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and 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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

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

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), the President's memorandum of November 30, 2022 (Uniform Standards for Tribal Consultation; 87 FR 74479, December 5, 2022), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes and Alaska Native Corporations (ANCs) on a government-to-government basis. In accordance with Secretaries' Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for

healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the Cedar Key mole skink, so no Tribal lands would be affected by the proposed designation.

References Cited

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

Authors

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

List of Subjects in 50 CFR Part 17

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

Signing Authority

Martha Williams, Director of the U.S. Fish and Wildlife Service, approved this action on June 14, 2024, for publication. On July 31, 2024, Martha Williams authorized the undersigned to sign the document electronically and submit it to the Office of the Federal Register for publication as an official document of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.11, in paragraph (h), amend the List of Endangered and Threatened Wildlife by adding an entry for ''Skink, Cedar Key mole'' in alphabetical order under REPTILES to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
REPTILES				
*	*	*	*	*
Skink, Cedar Key mole	*Plestiodon egregius insularis*	Wherever found	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.95(c).[CH]
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (c) by adding an entry for ''Cedar Key Mole Skink (*Plestiodon egregius insularis*)'' following the entry for ''Loggerhead Sea Turtle, Northwest Atlantic Ocean DPS (*Caretta caretta*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(c) *Reptiles.*

* * * * *

Cedar Key Mole Skink (*Plestiodon egregius insularis*)

(1) Critical habitat units are depicted for Levy County, Florida, on the maps in this entry.

(2) Within these areas, the physical or biological feature essential to the conservation of the Cedar Key mole skink consists of natural habitats (including, but not limited to, beaches, dunes, and coastal hammocks) along the coast or within the interior of the Cedar Keys that contain:

(i) Suitable soils (dry, loose, sandy, permeable, or friable soils) for movement and nesting; and

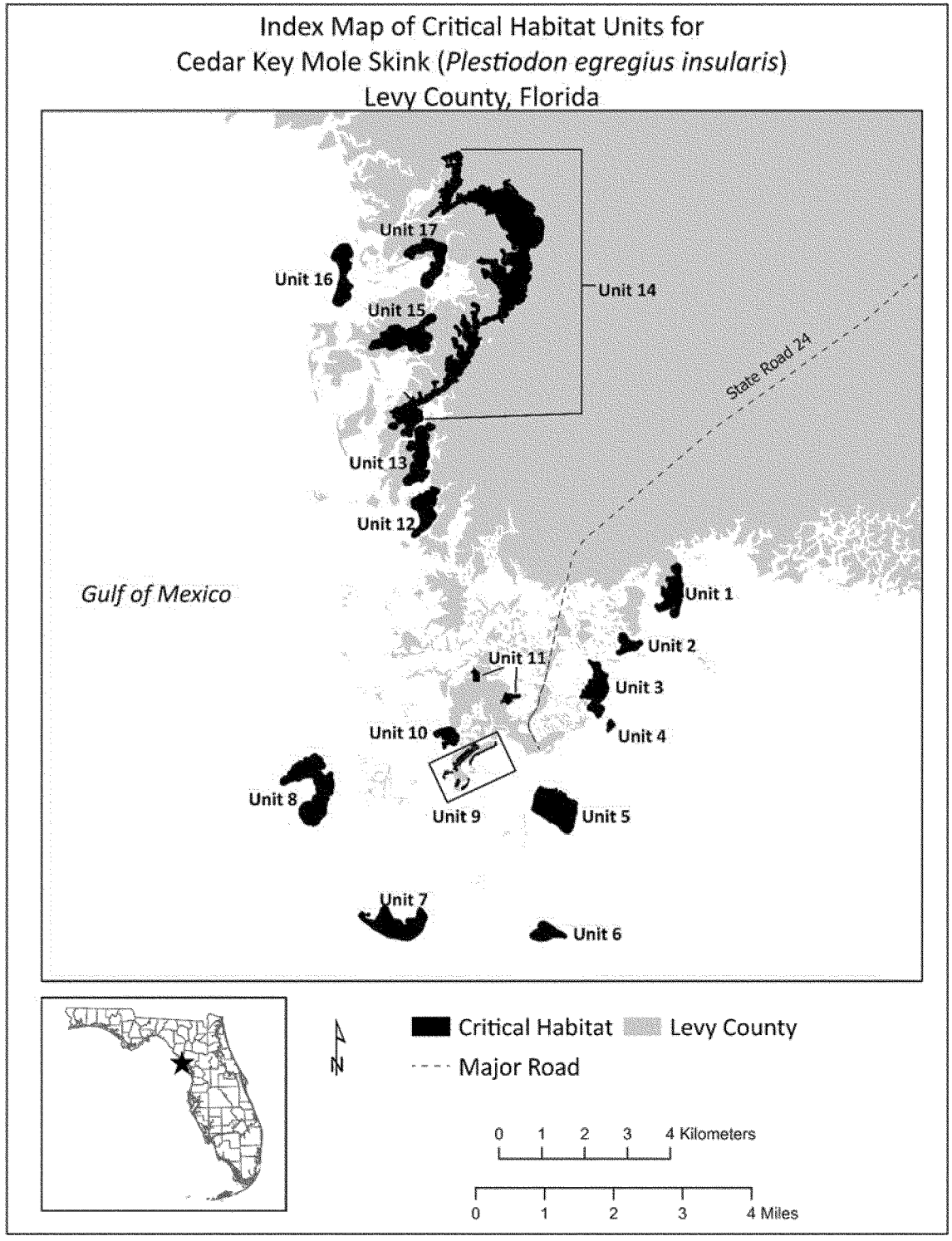
(ii) Sufficient, appropriate ground cover (including, but not limited to, tidal wrack deposited above the mean high-water line, leaf litter, and vegetative debris) for protection from predators and temperature extremes, sources of food (*e.g.,* insects and arthropods), and areas for reproduction.

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

(4) Data layers defining map units were created using Environmental Systems Research Institute's (ESRI's) Aeronautical Reconnaissance Coverage Geographical Information System (ArcPro) mapping software along with various spatial data layers. ArcPro was also used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was Albers Conical Equal Area (Florida Geographic Data Library), North American Datum of 1983 (NAD 83) High Accuracy Reference Network (HARN). The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/office/florida-ecological-services/library,* at *https://www.regulations.gov* at Docket No. FWS–R4–ES–2024–0053, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

Figure 1 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (5)

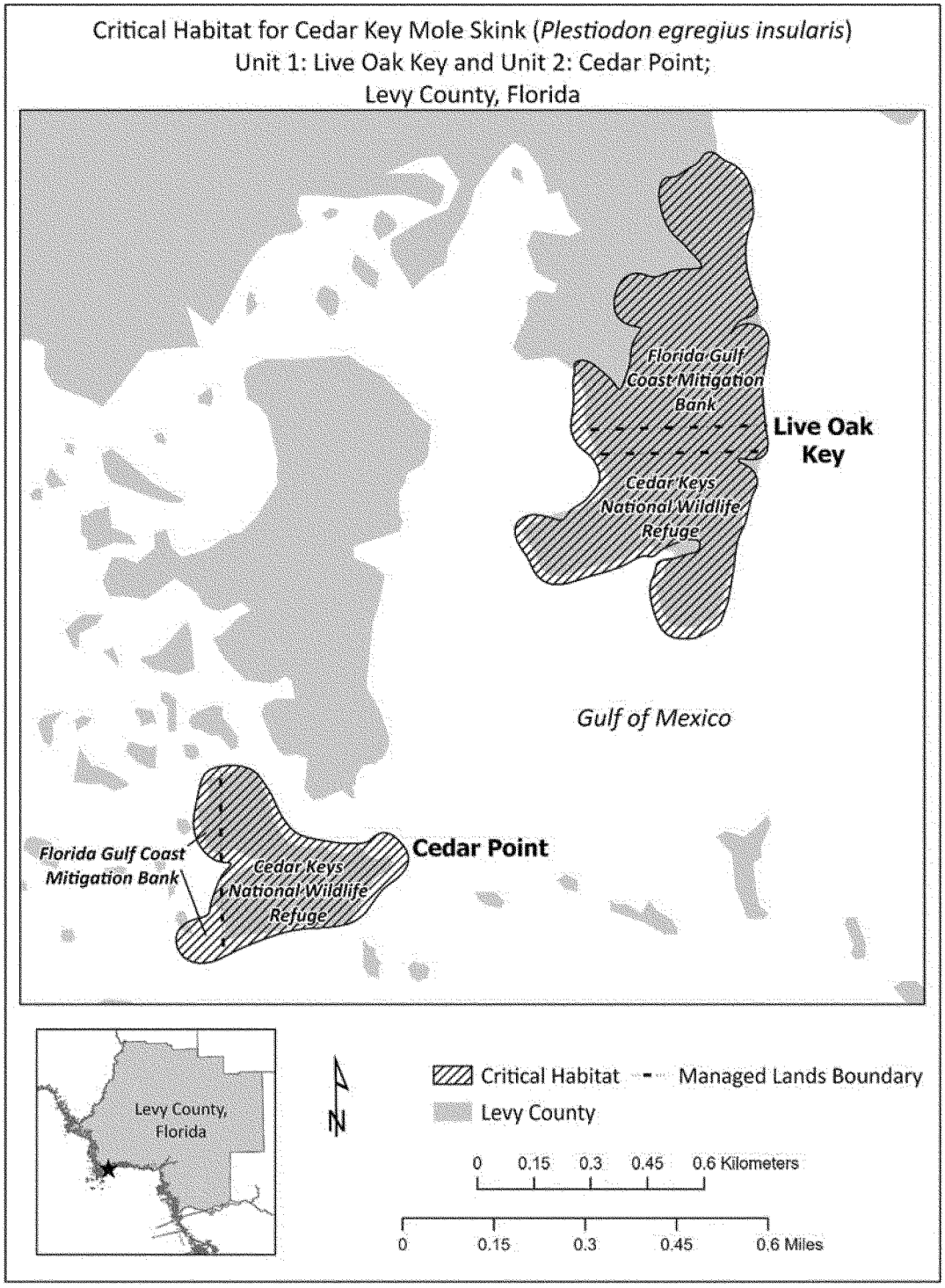


(6) *Unit 1:* Live Oak Key; Levy County, Florida.

(i) Unit 1 encompasses approximately 109 acres (44 hectares) and includes the entire island of Live Oak Key. Lands within this unit include approximately 46 acres (19 hectares) in Federal ownership, 49 acres (20 hectares) in private ownership, and 14 acres (6 hectares) in other ownership. Live Oak Key is approximately 2.5 miles (4 kilometers) northeast of Cedar Key within the Gulf of Mexico. The northern portion of the island is managed as the Florida Gulf Coast Mitigation Bank by a private entity and the southern portion is federally owned and managed by the Service as the part of the Cedar Keys National Wildlife Refuge.

(ii) Map of Units 1 and 2 follow:

Figure 2 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (6)(ii)



(7) *Unit 2:* Cedar Point; Levy County, Florida.

(i) Unit 2 encompasses approximately 41 acres (17 hectares) and includes the entire island of Cedar Point. Lands within this unit include approximately 26 acres (11 hectares) in Federal ownership and 15 acres (6 hectares) in private ownership. Cedar Point is approximately 1.7 miles (2.7 kilometers) northeast of Cedar Key within the Gulf of Mexico. The Service manages most of the island as the part of the Cedar Keys National Wildlife Refuge. The eastern portion is managed by a private entity as part of the Florida Gulf Coast Mitigation Bank.

(ii) Map of Unit 2 is provided at paragraph (6)(ii) of this entry.

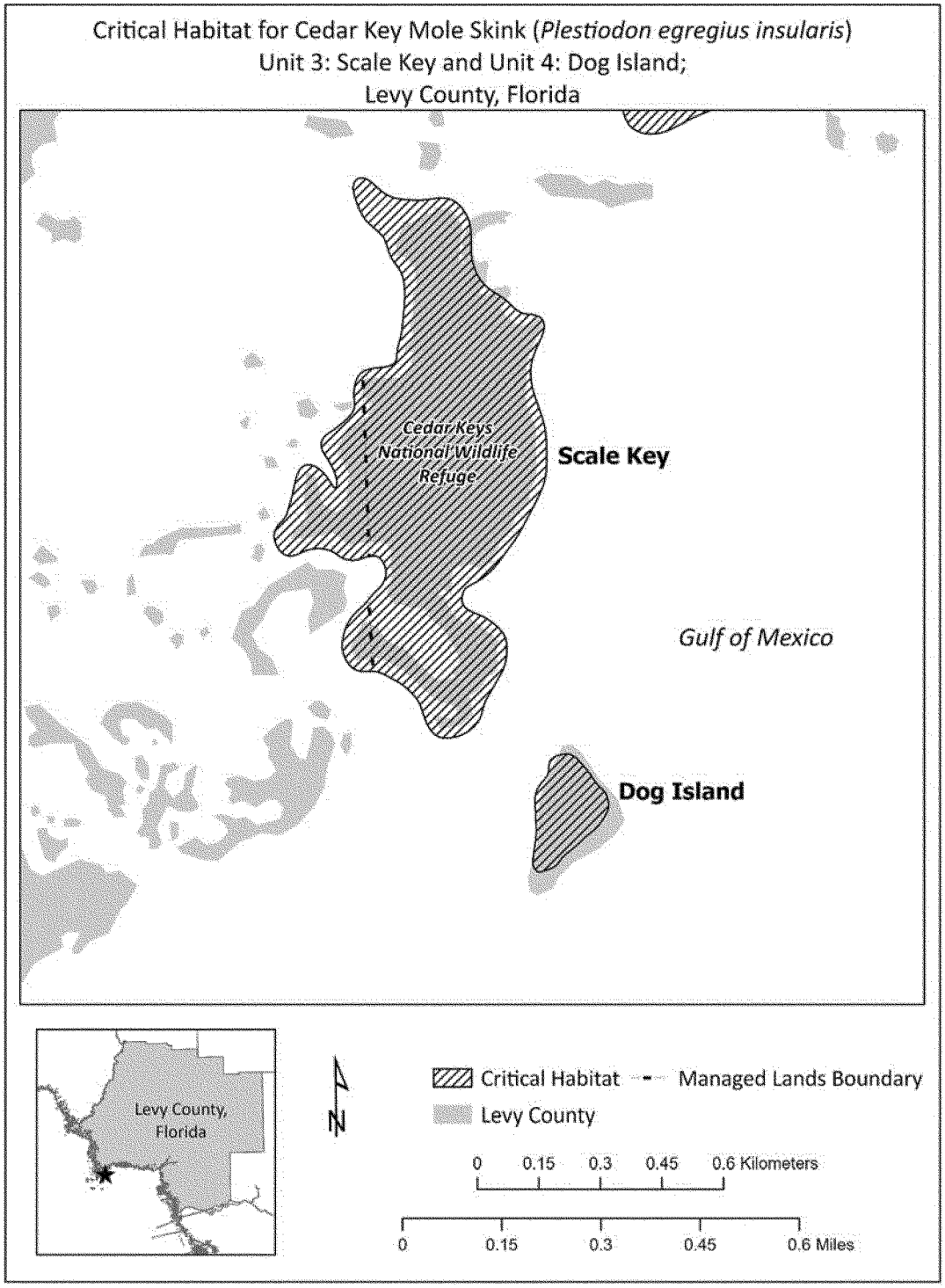
(8) *Unit 3:* Scale Key; Levy County, Florida.

(i) Unit 3 encompasses approximately 116 acres (47 hectares) and includes the entire island of Scale Key. Lands within this unit include approximately 95 acres (38 hectares) in Federal ownership and 21 acres (8 hectares) in private ownership. Scale Key is approximately 1 mile (1.6 kilometers) northeast of Cedar Key within the Gulf of Mexico. The Service manages most of the island as part of the Cedar Keys National

Wildlife Refuge. Approximately 14 acres (6 hectares) of the eastern portion are owned by Florida's Nature Coast Conservancy, and 5 acres (2 hectares) of the northern portion are managed by a private entity as part of the Florida Gulf Coast Mitigation Bank.

(ii) Map of Units 3 and 4 follows:

Figure 3 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (8)(ii)



(9) *Unit 4:* Dog Island; Levy County, Florida.

(i) Unit 4 encompasses approximately 8 acres (3 hectares) and includes the entirety of Dog Island. Dog Island is approximately 1 mile (1.6 kilometers) to the east of Cedar Key within the Gulf of Mexico. Lands within this unit are entirely within State ownership.

(ii) Map of Unit 4 is provided at paragraph (8)(ii) of this entry.

(10) *Unit 5:* Atsena Otie Key; Levy County, Florida.

(i) Unit 5 encompasses approximately 183 acres (74 hectares) and includes the entire island of Atsena Otie Key. Lands within this unit include approximately 116 acres (47 hectares) in State ownership and 67 acres (27 hectares) in other ownership. Atsena Otie Key is approximately 1 mile (1.6 kilometers) south of Cedar Key within the Gulf of Mexico. The island is owned by the State of Florida and managed as part of the Cedar Keys National Wildlife Refuge through a memorandum of understanding by the Service.

(ii) Map of Units 5, 6, and 7 follows:

Figure 4 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (10)(ii)

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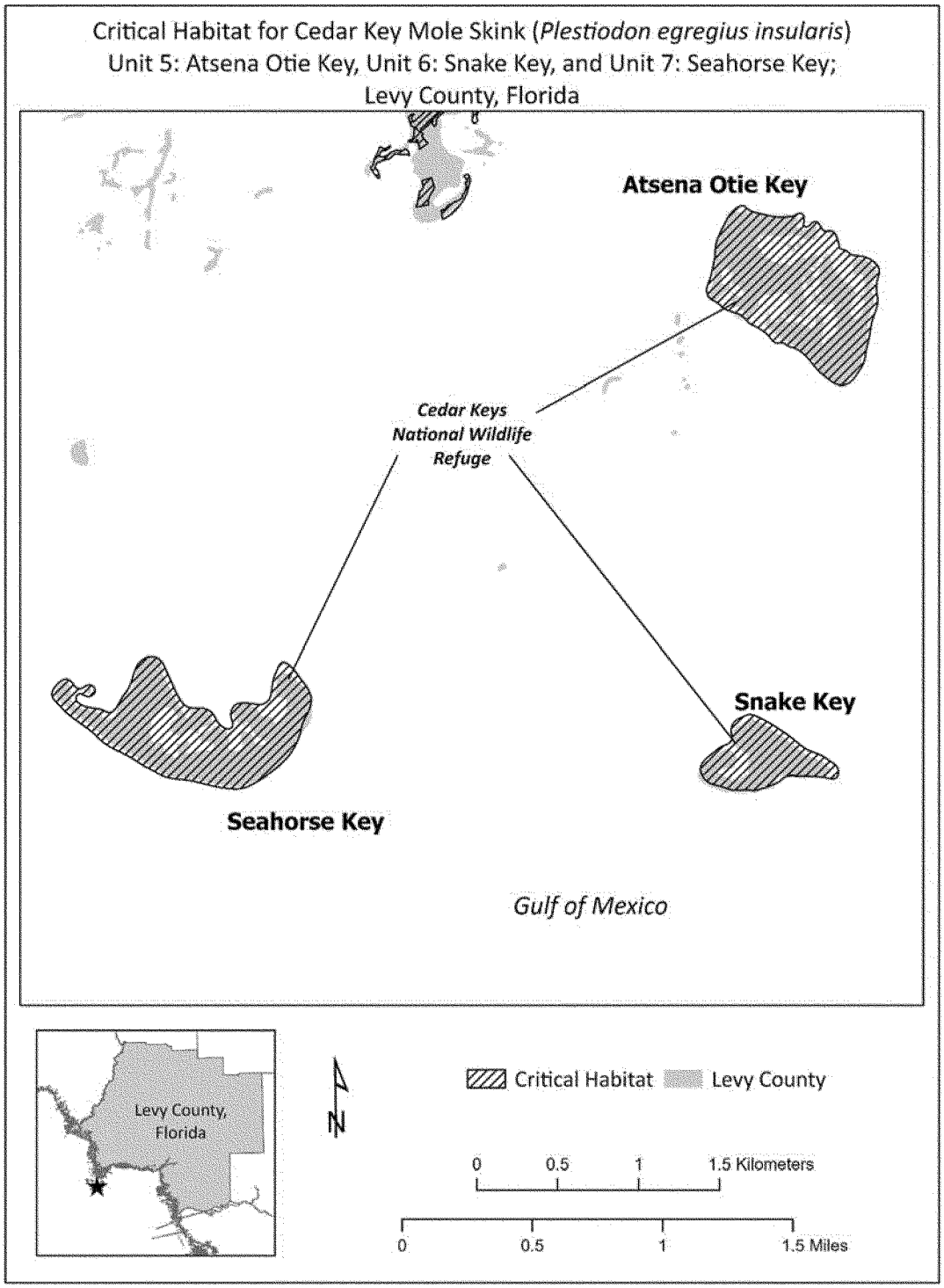

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(11) *Unit 6:* Snake Key; Levy County, Florida.

(i) Unit 6 encompasses approximately 57 acres (23 hectares) and includes the

entire island of Snake Key. Lands within this unit include approximately 39 acres (16 hectares) in Federal ownership and 17 acres (7 hectares) in other ownership. Snake Key is approximately 2.5 miles (4 kilometers) south of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge.

(ii) Map of Unit 6 is provided at paragraph (10)(ii) of this entry.

(12) *Unit 7:* Seahorse Key; Levy County, Florida.

(i) Unit 7 encompasses approximately 165 acres (67 hectares) and includes the entire island of Seahorse Key. Lands within this unit include approximately 118 acres (48 hectares) in Federal ownership and 47 acres (19 hectares) in other ownership. Seahorse Key is approximately 3 miles (5 kilometers) south and west of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge.

(ii) Map of Unit 7 is provided at paragraph (10)(ii) of this entry.

(13) *Unit 8:* North Key; Levy County, Florida.

(i) Unit 8 encompasses approximately 236 acres (95 hectares) and includes the entire island of North Key. Lands within this unit include approximately 129 acres (52 hectares) in Federal ownership and 107 acres (43 hectares) in other ownership. North Key is approximately 3 miles (4.8 kilometers) to the west of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge.

(ii) Map of Unit 8 follows:

Figure 5 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (13)(ii)

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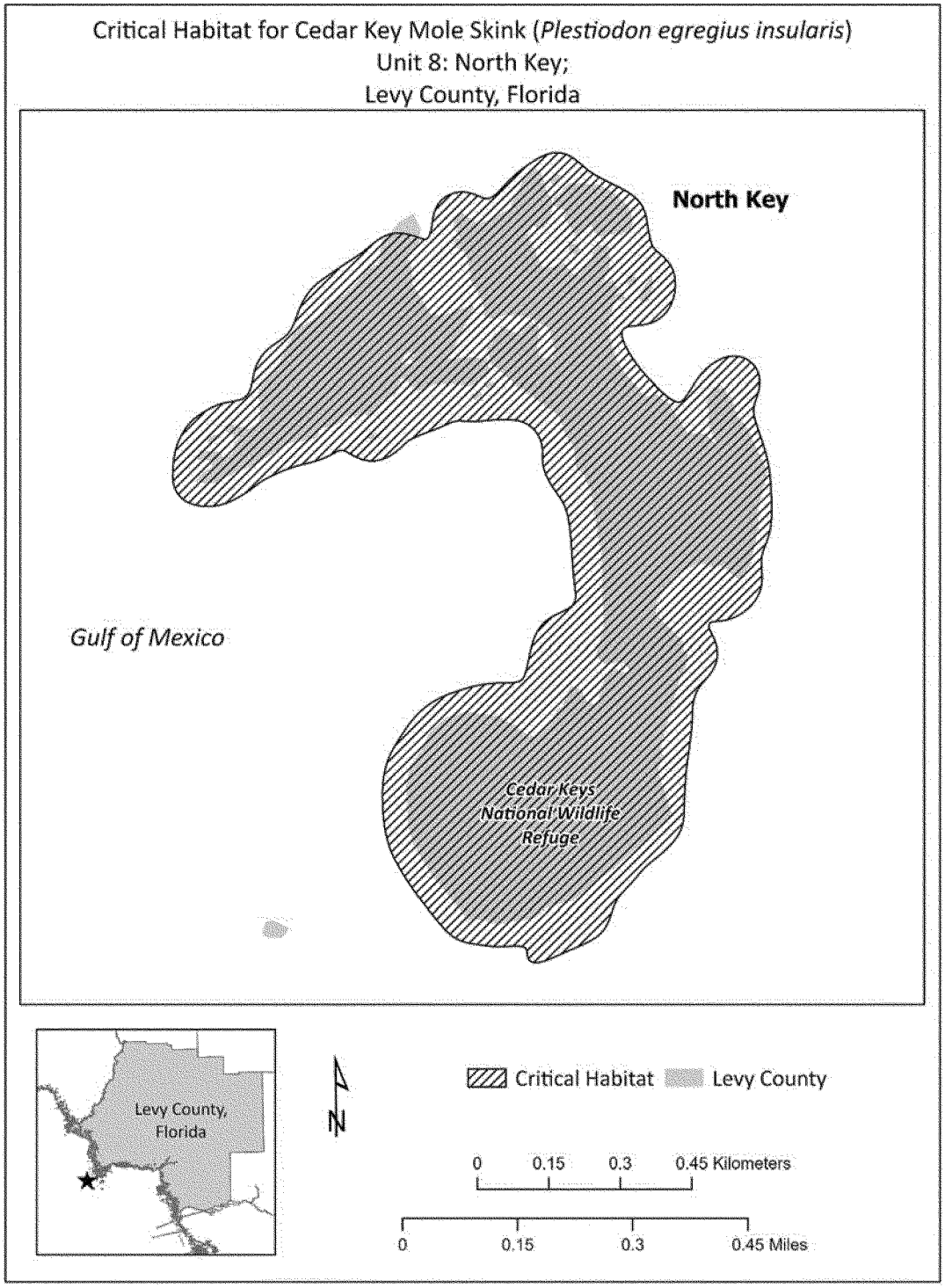

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(14) *Unit 9:* Airstrip Island; Levy County, Florida.

(i) Unit 9 encompasses approximately 29 acres (12 hectares) on the island of Way Key. Lands within this unit include approximately 19 acres (8 hectares) in local government ownership and 10 acres (4 hectares) in private ownership. This unit is composed of five separate sections.

(A) Airstrip Island Beach is 5 acres (2 hectares) of private shoreline along Daughtry Bayou, encompassing sandy beach from mean higher high-water inland to dense vegetation, hardened structures, or roads, extending from the southern side of the Airport Road bridge to the south for approximately 0.5 mile (0.8 kilometer).

(B) Cedar Key Airport includes 16 acres (6.5 hectares) of unvegetated and vegetated sandy soils on the George T. Lewis Airport (also known as the Cedar Key Airport) that are owned by Levy County.

(C) Airport Island is a 2-acre (0.8-hectare), unnamed island southwest of the airport that is owned by Levy County.

(D) Piney Point is a 3-acre (1-hectare), privately owned, undeveloped, vacant lot on the western side of Piney Point south of the airport.

(E) The Robert Cull Nature Preserve is 2 acres (0.8 hectare) of protected land at the terminus of Piney Point that are owned and managed by Florida's Nature Coast Conservancy.

(ii) Map of Units 9 and 10 follows:

Figure 6 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (14)(ii)

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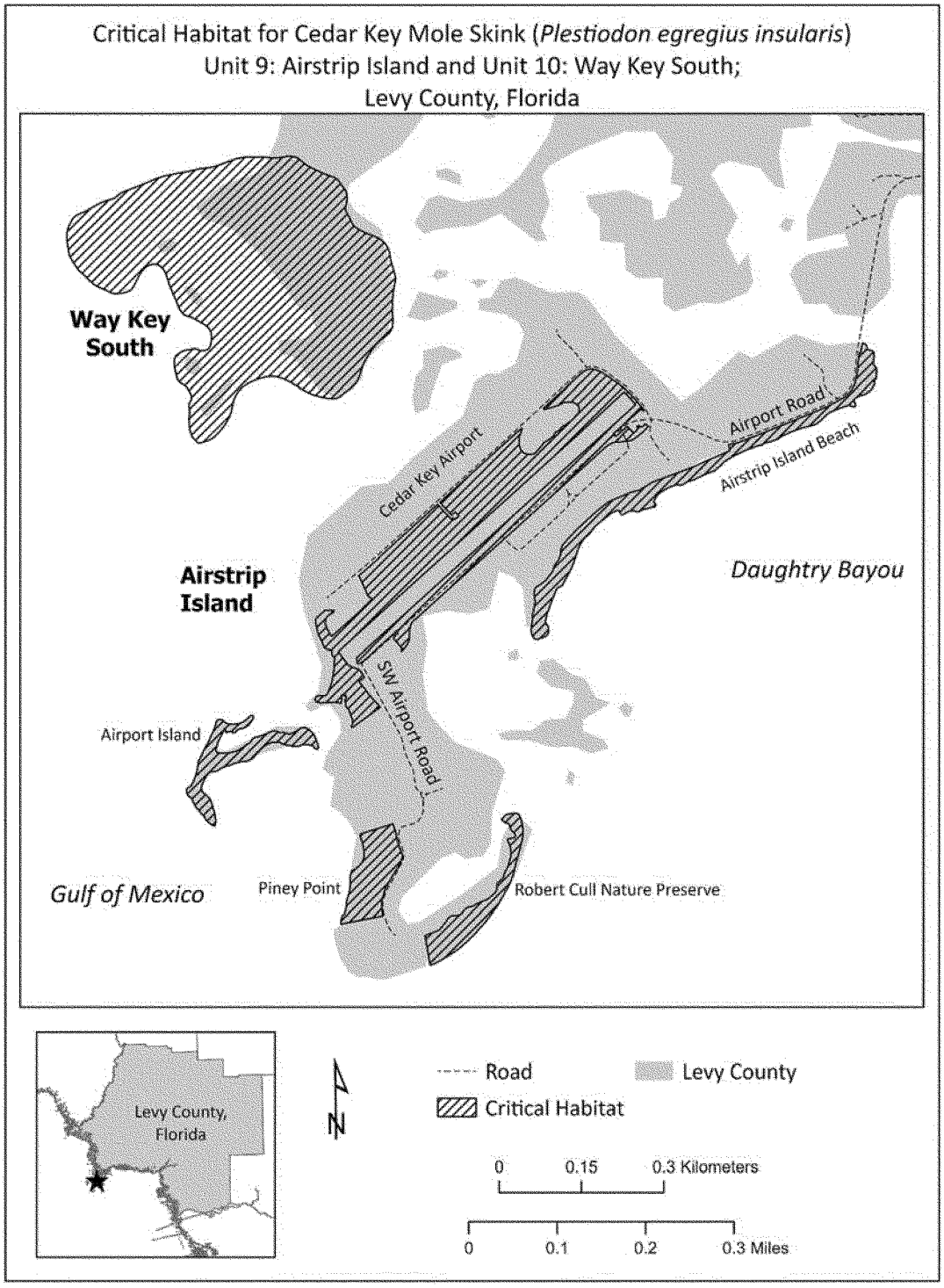

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(15) *Unit 10:* Way Key South; Levy County, Florida.

(i) Unit 10 encompasses approximately 44 acres (18 hectares) on Way Key. This unit is a series of undeveloped, disconnected islands south of Way Key. The unit includes a large portion of the island located between the airport and the developed portion of Way Key and several

primarily sand islands that occur seaward of the main island. This unit is entirely in State ownership.

(ii) Map of Unit 10 is provided at paragraph (14)(ii) of this entry.

(16) *Unit 11:* Way Key North; Levy County, Florida.

(i) Unit 11 encompasses approximately 24 acres (10 hectares) on Way Key. Lands within this unit include approximately 9 acres (4 hectares) in State ownership, managed as the Cedar Key Museum State Park by the Florida Park Service, and 15 acres (6 hectares) in local government ownership, managed as Cemetery Point Park by the City of Cedar Key.

(ii) Map of Unit 11 follows:

Figure 7 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (16)(ii)

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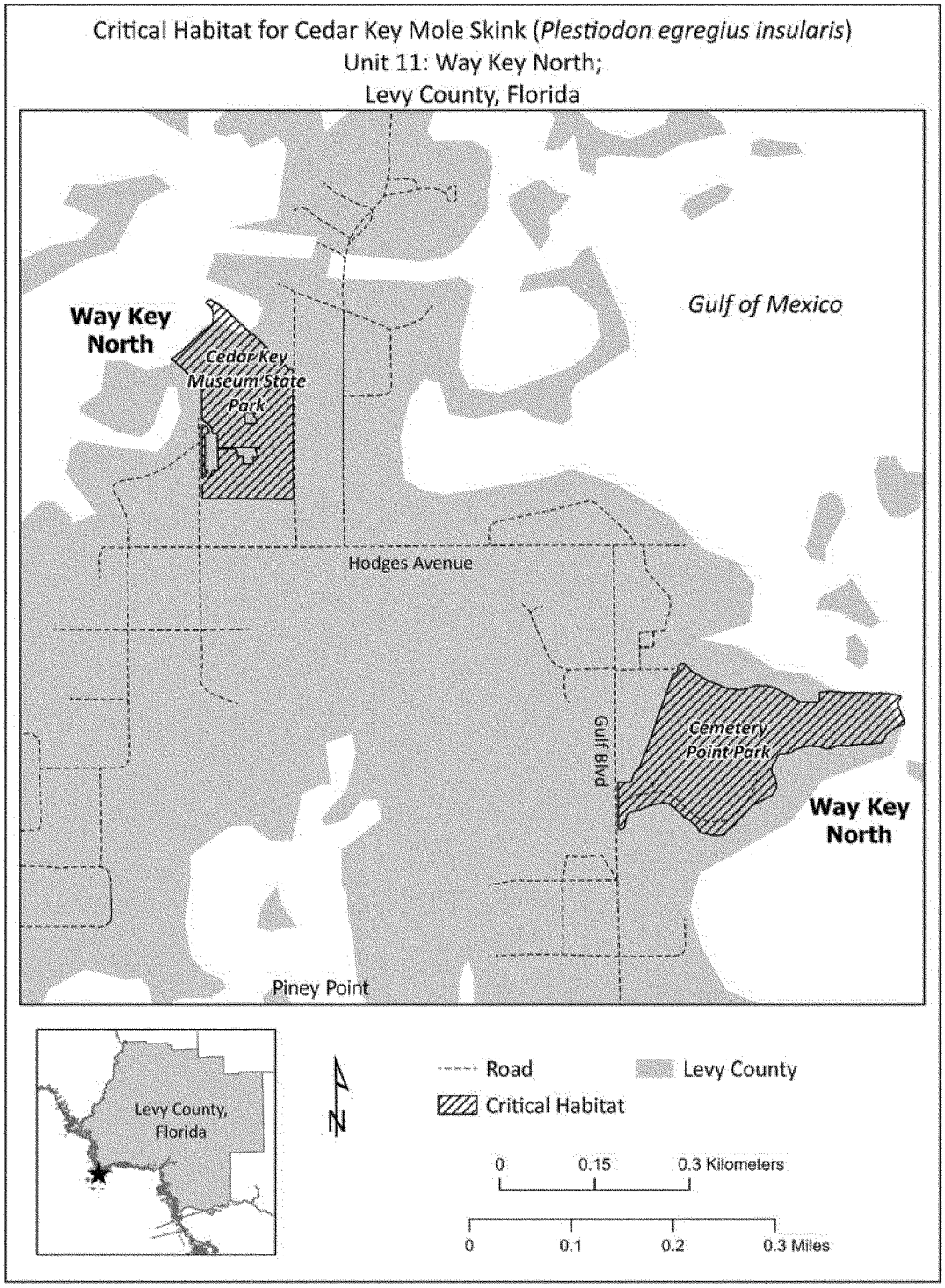

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(17) *Unit 12:* Richards Island; Levy County, Florida.

(i) Unit 12 encompasses approximately 105 acres (42 hectares) and includes the entirety of Richards Island. Lands within this unit include approximately 86 acres (35 hectares) in Federal ownership and 19 acres (8 hectares) in other ownership. Richards Island is approximately 3.3 miles (5.3 kilometers) northwest of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Cedar Keys National Wildlife Refuge.

(ii) Map of Units 12 and 13 follows:

Figure 8 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (17)(ii)

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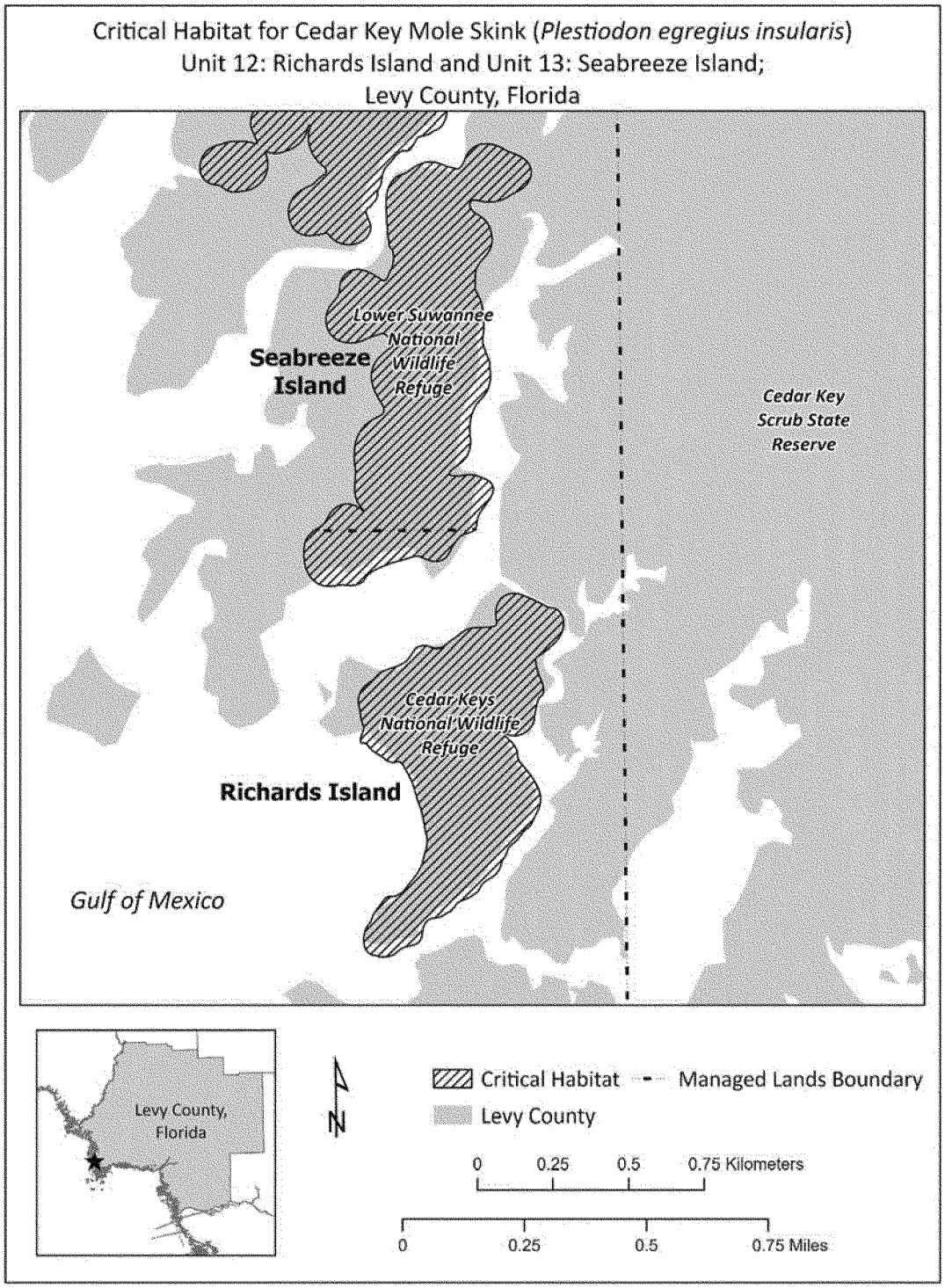

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(18) *Unit 13:* Seabreeze Island; Levy County, Florida.

(i) Unit 13 encompasses approximately 136 acres (55 hectares)

on Seabreeze Island. Lands within this unit include approximately 111 acres (45 hectares) in Federal ownership and 25 acres (10 hectares) in other ownership. Seabreeze Island is approximately 4 miles (6 kilometers) northwest of Cedar Key within the Gulf of Mexico. The island is managed by the Service as part of the Lower Suwannee National Wildlife Refuge.

(ii) Map of Unit 13 is provided at paragraph (17)(ii) of this entry.

(19) *Unit 14:* Shell Mound; Levy County, Florida.

(i) Unit 14 encompasses approximately 1,050 acres (425 hectares) on Shell Mound. This unit extends from Dennis Creek north to Ericson Creek. Lands within this unit include approximately 167 acres (68 hectares) in Federal ownership, 194 acres (79 hectares) in State ownership, and 688 acres (278 hectares) in private ownership. The unit includes portions of the Cedar Key Scrub State Reserve managed by the Florida Park Service and the Lower Suwannee National Wildlife Refuge managed by the Service.

(ii) Map of Units 14, 15, 16, and 17 follows:

Figure 9 to Cedar Key Mole Skink (*Plestiodon egregius insularis*) paragraph (19)(ii)

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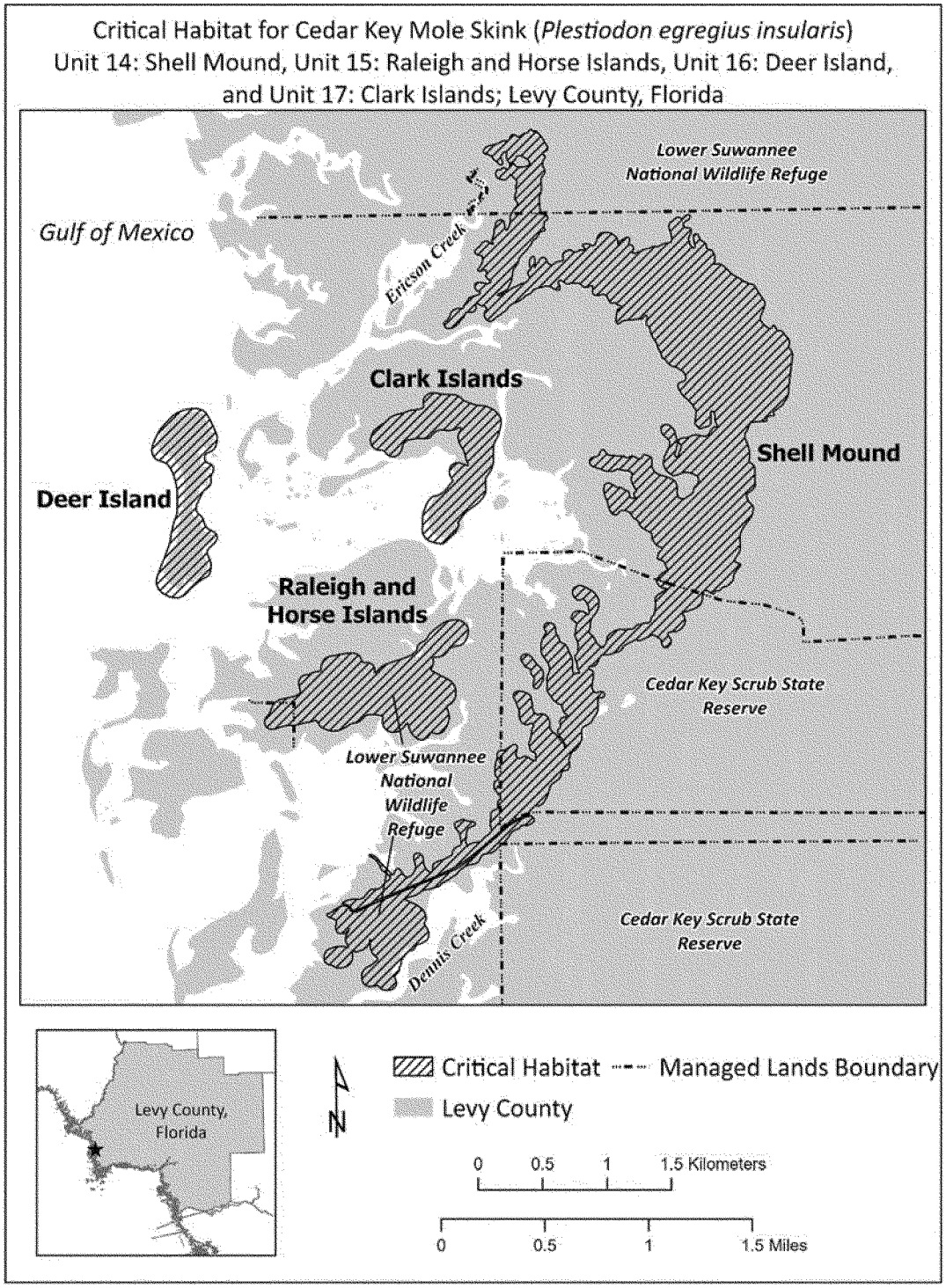

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(20) *Unit 15:* Raleigh and Horse Islands; Levy County, Florida.

(i) Unit 15 encompasses approximately 176 acres (71 hectares) on Raleigh and Horse Islands. Approximately 171 acres (69 hectares) are in Federal ownership and 5 acres (2 hectares) are in private ownership. The group of islands are approximately 6 miles (10 kilometers) northwest of Cedar Key within the Gulf of Mexico. The Service manages most of the islands as part of the Lower Suwannee National Wildlife Refuge.

(ii) Map of Unit 15 is provided at paragraph (19)(ii) of this entry.

(21) *Unit 16:* Deer Island; Levy County, Florida.

(i) Unit 16 encompasses approximately 113 acres (46 hectares) and includes the entirety of Deer Island. Lands within the unit include approximately 8 acres (3 hectares) in Federal ownership, 69 acres (28 hectares) in private ownership, and 36 acres (15 hectares) in other ownership. Deer Island is approximately 7 miles (11 kilometers) northwest of Cedar Key within the Gulf of Mexico.

(ii) Map of Unit 16 is provided at paragraph (19)(ii) of this entry.

(22) *Unit 17:* Clark Islands; Levy County, Florida.

(i) Unit 17 encompasses approximately 121 acres (49 hectares) in the Clark Islands complex. The entirety of the unit is privately owned. The Clark Islands are approximately 7 miles (11 kilometers) north-northwest of Cedar Key within the Gulf of Mexico.

(ii) Map of Unit 17 is provided at paragraph (19)(ii) of this entry.

* * * * *

Madonna Baucum,

Regulations and Policy Chief, Division of Policy, Economics, Risk Management, and Analytics of the Joint Administrative Operations, U.S. Fish and Wildlife Service.

[FR Doc. 2024–17271 Filed 8–7–24; 8:45 am]

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