

§ 17.11 Endangered and threatened wildlife. (h) \* \* \*

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Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
Sucker, Zuni bluehead.	<i>Catostomus discobolus yarrowi</i> .	U.S.A. (AZ, NM) .....	Entire .....	E	.....	NA	NA

\* \* \* \* \*

Dated: January 14, 2013.  
**Daniel M Ashe,**  
 Director, U.S. Fish and Wildlife Service.  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R2-ES-2013-0001; 4500030114]

RIN 1018-AZ24

**Endangered and Threatened Wildlife and Plants; Endangered Status for Four Central Texas Salamanders and Designation of Critical Habitat**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the August 22, 2012, proposed listing and proposed designation of critical habitat for the Austin blind salamander, Georgetown salamander, Jollyville Plateau salamander, and Salado salamander under the Endangered Species Act of 1973, as amended. Based on additional salamander locations we identified during the 60-day comment period, we are proposing to revise previously proposed critical habitat units for the Georgetown and Jollyville Plateau salamanders. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for the four central Texas salamanders, an amended required determinations section of the proposal, an amended exclusions section of the proposal, and the availability of a

refined impervious cover analysis. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the original proposed rule, this revised proposed rule, the associated draft economic analysis, the amended required determinations and exclusions sections, and the refined impervious cover analysis. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**Document Availability:** You may obtain copies of the original proposed rule, this revised proposed rule, the draft economic analysis, and the refined impervious cover analysis on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 or Docket No. FWS-R2-ES-2013-0001 or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

**DATES:** We will consider comments received or postmarked on or before March 11, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS-R2-ES-2012-0035, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS-R2-ES-2013-0001. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2012-

0035; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2013-0001; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

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

**FOR FURTHER INFORMATION CONTACT:** Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512-490-0057; or by facsimile 512-490-0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the four central Texas salamanders that was published in the **Federal Register** on August 22, 2012 (77 FR 50768), this revised proposed rule, our draft economic analysis (DEA) of the proposed designation, the amended required determinations and exclusions sections, and the refined impervious cover analysis. We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat

determination for the 4 central Texas salamanders. The final listing rule will publish under the existing Docket No. FWS-R2-ES-2012-0035 and the final critical habitat designation will publish under Docket No. FWS-R2-ES-2013-0001.

We request that you provide comments specifically on our listing determination under Docket No. FWS-R2-ES-2012-0035. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for these species and their habitats.

(4) Land use designations including current or planned activities in the areas occupied by the species and possible impacts of these activities on the four central Texas salamanders and on proposed critical habitat.

We request that you provide comments specifically on the critical habitat determination and related economic analysis under Docket No. FWS-R2-ES-2013-0001. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of the four central Texas salamanders and their habitats;

(b) What areas, that are currently occupied by these species and that contain features essential to their conservation, should be considered for critical habitat and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are

proposing, including managing for the potential effects of climate change;

(d) What areas not occupied at the time of listing are essential for the conservation of these species and why;

(e) How subterranean populations of these four salamander species are distributed underground; and

(f) The interconnectedness of salamander habitats in terms of hydrology, and whether salamanders are able to move between sites through underground aquifer conduits.

(7) Information on the projected and reasonably likely impacts of climate change on the four central Texas salamanders and proposed critical habitat.

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final critical habitat designation; in particular, we seek information on any impacts on small entities, and the benefits of including or excluding areas that are subject to these impacts.

(9) 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, in particular for those areas that may benefit from the Buttercup Habitat Conservation Plan (HCP), Lakeline HCP, and Barton Springs Pool HCP.

(10) 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.

If you submitted comments or information on the proposed rule (77 FR 50768) during the initial comment period from August 22, 2012, to October 22, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule

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

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0035 and Docket No. FWS-R2-ES-2013-0001, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS-R2-ES-2012-0035 or Docket No. FWS-R2-ES-2013-0001, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Background

It is our intent to discuss only those topics directly relevant to the listing and designation of critical habitat for the four central Texas salamanders in this document. For more information on the four central Texas salamanders, their habitat, or previous Federal actions, refer to the proposed listing rule published in the **Federal Register** on August 22, 2012 (77 FR 50768), which is available online at <http://www.regulations.gov> (at Docket Number FWS-R2-ES-2012-0035 or Docket No. FWS-R2-ES-2013-0001) or from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

On August 22, 2012, we published a proposed rule to designate critical habitat for the four central Texas salamanders (77 FR 50768). We proposed to designate approximately 5,983 acres (ac) (2,440 hectares (ha)) in 52 units located in Travis, Williamson, and Bell Counties, Texas, as critical habitat. That proposal had a 60-day comment period, ending October 22, 2012. We held a public meeting and

hearing in Round Rock, Texas, on September 5, 2012, and a second public meeting and hearing in Austin, Texas, on September 6, 2012.

### Refined Impervious Cover Analysis

In our August 22, 2012, proposed rule (77 FR 50768), under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*, we used the best available information at that time to calculate the extent and magnitude of impervious cover within the watersheds occupied by the four central Texas salamander species. Impervious cover degrades stream habitat in three ways: (1) Introducing and concentrating contaminants in surface runoff, (2) increasing the rate at which sediment is deposited into a stream, and (3) altering the natural flow regime of streams. We used an impervious cover analysis in the proposed rule (77 FR 50768) to help inform our analysis of the threat of urbanization to the four central Texas salamanders. This refined analysis will help inform the final listing determination of the four central Texas salamanders.

For the August 22, 2012, impervious cover analysis, we used the national Watershed Boundary Dataset to delineate 15 watersheds occupied by the four central Texas salamander species. Although the data for this impervious cover analysis were derived using the finest scale hydrologic units readily available at that time in the Watershed Boundary Dataset, they were too large to offer any reference to the location of salamander-occupied spring sites in relation to the location of impervious cover within the watersheds. Because this analysis did not take into account whether the salamander sites are found upstream or downstream of impervious surfaces associated with developed areas, our previous impervious cover analysis within each watershed may not necessarily be an indicator of how much impervious cover is actually impacting water quality at known salamander sites.

Since the publication of our August 22, 2012, proposed rule (77 FR 50768), we obtained new information that has allowed us to refine our impervious cover analysis and determine where impervious cover is in relation to known salamander sites. This refined analysis is based on the National Hydrography Dataset Plus watershed dataset, which is a nationally consistent watershed dataset developed by the U.S. Environmental Protection Agency and U.S. Geological Survey. The National Hydrography Dataset Plus integrates the National Hydrography Dataset with the

National Elevation Dataset and the Watershed Boundary Dataset to locate and identify smaller watersheds than can be found in the Watershed Boundary Dataset itself. We then used ESRI software to create an aspect map and a set of 5-foot (ft) (2-meter (m)) contour lines to help guide the identification and mapping of even smaller watersheds that specifically drain into individual salamander spring sites (springsheds). In our refined analysis, we calculated impervious cover within 113 springsheds occupied by the 4 central Texas salamander species. We also compared the results of our refined impervious cover analysis with two additional impervious cover analyses conducted by SWCA Environmental Consultants (SWCA) and the City of Austin (COA).

Increases in impervious cover cause measurable stream degradation (Klein 1979, p. 959; Bannerman *et al.* 1993, pp. 251–254, 256–258; Center for Watershed Protection 2003, p. 91; Coles *et al.* 2012, p. 4). The best available scientific literature indicates that detrimental effects to salamander habitat are likely to begin having significant negative impact on salamander populations at 10 percent impervious cover in a springshed. This is in agreement with Bowles *et al.* (2006, pp. 113, 117–118), which found lower Jollyville Plateau salamander densities in watersheds with more than 10 percent impervious cover. Based upon our refined impervious cover analysis, we have found that the Jollyville Plateau salamander has the highest number of springsheds with habitat degrading levels of impervious cover (57 out of 91). Results from COA data are similar to our findings, and suggest that an additional three Jollyville Plateau salamander sites have habitat-degrading levels of impervious cover. Conversely, our data show that the watersheds encompassing Georgetown and Salado salamander habitat are relatively low in impervious cover. However, the high human population growth rate expected in Williamson and Bell Counties indicates that impervious cover has the potential of approaching levels that could negatively impact the Georgetown and Salado salamanders' continued existence. In addition, SWCA's analysis demonstrates that recent development and quarry creation in some Georgetown salamander springsheds may have already increased impervious cover past the threshold of habitat degradation.

For more detailed information or to obtain copies of our refined impervious cover analysis, go to <http://www.regulations.gov> and search for Docket Number FWS–R2–ES–2012–

0035, or you may obtain copies by mail from the Austin Ecological Field Services Office (see **FOR FURTHER INFORMATION CONTACT**).

### Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

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

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the four central Texas

salamanders, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the four central Texas salamanders due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a DEA concerning the proposed critical habitat designation, which is available for review (see <http://www.regulations.gov> at Docket Number FWS-R2-ES-2013-0001, or contact the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**)) and comment (see **ADDRESSES**).

**Changes From Previously Proposed Critical Habitat**

In this document, we are notifying the public of changes to the proposed critical habitat designation. Based on additional information we received during the August 22, 2012, to October 22, 2012, comment period on the proposed rule, in this document we propose to revise Units 2, 3, 5, 8, and 12 for the Georgetown salamander, and Units 3, 4, 5, 9, 10, 17, 22, 23, and 28 for the Jollyville Plateau salamander. All other areas proposed on August 22,

2012, remain as proposed at 77 FR 50768 for designation as critical habitat.

The proposed revisions for the Georgetown salamander critical habitat Units 2, 3, 5, 8, and 12 are adjustments in the locations of these units based on clarifying information we received since the proposed rule was published. Proposed Unit 2 is located 130 ft (40 m) southeast from the location we gave in the August 22, 2012, proposed rule. Proposed Unit 3 is located 2,350 ft (715 m) to the northeast of the location we gave in the August 22, 2012, proposed rule. Unit 5 is located 165 ft (50 m) to the southwest from the location we gave in the August 22, 2012, proposed rule. In Unit 8, the Knight Spring location is located 165 ft (50 m) west of the location we gave in the August 22, 2012, proposed rule. Lastly, Unit 12 is located 200 ft (60 m) to the northwest of the location we gave in the August 22, 2012, proposed rule. The total number of proposed critical habitat units, landownership by type, and size of the proposed critical habitat units remain the same for the Georgetown salamander as provided in the August 22, 2012, proposed rule.

For the Jollyville Plateau Salamander, we received additional locations where salamanders are known to occur that we are using to revise proposed Units 3, 4, 5, 9, 10, 17, 22, 23, and 28. Based on eight new locations, we are combining proposed Units 3, 4, and 5 into one proposed critical habitat unit, Unit 3 (Buttercup Creek Unit). Unit 3 now contains a total of 699 ac (283 ha) of proposed critical habitat. In proposed Unit 9, we are proposing to add one

additional spring location (Wheless 2), which results in an increase in the proposed unit's area increasing from 135 ac (55 ha) to 145 ac (59 ha). In proposed Unit 10, we are proposing to add two new locations, Blizzard 2 and 3, which increases the size of this proposed unit from 68 ac (28 ha) to 88 ac (36 ha). In proposed Unit 17, we are proposing to add eight new locations, which changes the size of this proposed unit from 1,157 ac (468 ha) to 1,198 ac (485 ha). Based on five new additional locations, we are proposing to combine previously proposed Units 22 and 23 into one unit, Unit 22 (Sylvia Spring Area Unit). Unit 22 now contains a total of 238 ac (96 ha) of proposed critical habitat. In proposed Unit 28, we are proposing to add one new location called Stillhouse Hollow, but the proposed addition of this location does not result in a change to the size of the unit. In total for the Jollyville Plateau salamander, we previously proposed 4,460 ac (1,816 ha) of critical habitat in 33 units, which we have revised based on new locations, and we are now proposing 4,934 ac (1,997 ha) in 30 units.

**Proposed Critical Habitat Designation**

In Tables 1 and 2 below, we present the revised proposed critical habitat units for the Georgetown and Jollyville Plateau salamanders. Also, we provide revised unit descriptions for Jollyville Plateau salamander Units 3 and 22. Further detail for both surface and subsurface critical habitat components may be found in the August 22, 2012, proposed rule (77 FR 50768).

TABLE 1—PROPOSED CRITICAL HABITAT UNITS FOR THE GEORGETOWN SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Cobb Unit .....	Private .....	83 (34)
2. Cowen Creek Spring Unit .....	Private .....	68 (28)
3. Bat Well Unit .....	Private .....	68 (28)
4. Walnut Spring Unit .....	Private, County .....	68 (28)
5. Twin Springs Unit .....	Private, County .....	68 (28)
6. Hogg Hollow Spring Unit .....	Private, Federal .....	68 (28)
7. Cedar Hollow Spring Unit .....	Private .....	68 (28)
8. Lake Georgetown Unit .....	Federal, Private .....	132 (53)
9. Water Tank Cave Unit .....	Private .....	68 (28)
10. Avant Spring Unit .....	Private .....	68 (28)
11. Buford Hollow Spring Unit .....	Federal, Private .....	68 (28)
12. Swinbank Spring Unit .....	City, Private .....	68 (28)
13. Shadow Canyon Unit .....	City, Private .....	68 (28)
14. San Gabriel Springs Unit .....	City .....	68 (28)
Total .....	.....	1,031 ac (423 ha)

NOTE: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

TABLE 2—REVISED PROPOSED CRITICAL HABITAT UNITS FOR THE JOLLYVILLE PLATEAU SALAMANDER

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)
1. Krienke Spring Unit .....	Private .....	68 (28)
2. Brushy Creek Spring Unit .....	Private .....	68 (28)
3. Buttercup Creek Unit .....	Private, State, City .....	699 (283)
6. Avery Spring Unit .....	Private .....	237 (96)
7. PC Spring Unit .....	Private .....	68 (28)
8. Baker and Audubon Spring Unit .....	Private .....	110 (45)
9. Wheless Spring Unit .....	Private, County .....	145 (59)
10. Blizzard R-Bar-B Spring Unit .....	Private .....	88 (36)
11. House Spring Unit .....	Private .....	68 (28)
12. Kelly Hollow Spring Unit .....	Private .....	68 (28)
13. MacDonald Well Unit .....	Private, County .....	68 (28)
14. Kretschmarr Unit .....	Private, County .....	112 (45)
15. Pope and Hiers (Canyon Creek) Spring Unit .....	Private .....	68 (28)
16. Fern Gully Spring Unit .....	Private, City .....	68 (28)
17. Bull Creek 1 Unit .....	Private, City, County .....	1,198 (485)
18. Bull Creek 2 Unit .....	Private, City, County .....	237 (96)
19. Bull Creek 3 Unit .....	Private, City .....	254 (103)
20. Moss Gulley Spring Unit .....	City, County .....	68 (28)
21. Ivanhoe Spring Unit .....	City .....	68 (28)
22. Sylvia Spring Area Unit .....	Private, City, County .....	238 (96)
24. Long Hog Hollow Unit .....	Private .....	68 (28)
25. Tributary 3 Unit .....	Private .....	68 (28)
26. Sierra Spring Unit .....	Private .....	68 (28)
27. Troll Spring Unit .....	Private .....	98 (40)
28. Stillhouse Unit .....	Private .....	203 (82)
29. Salamander Cave Unit .....	Private .....	68 (28)
30. Indian Spring Unit .....	Private .....	68 (28)
31. Spicewood Spring Unit .....	Private .....	68 (28)
32. Balcones District Park Spring Unit .....	Private, City .....	68 (28)
33. Tributary 4 Unit .....	Private, City .....	159 (64)
Total .....	.....	4,934 ac (1,997 ha)

NOTE: Area sizes may not sum due to rounding. Area estimates reflect all land within critical habitat unit boundaries.

### Jollyville Plateau Salamander

#### Unit 3: Buttercup Creek Unit

Unit 3 consists of 699 ac (283 ha) of City of Austin, State of Texas, and private land in southern Williamson County and northern Travis County, Texas. The unit is located just east of Anderson Mill Road. Lakeline Boulevard, a major thoroughfare, crosses the northeast area of the unit. The unit is mostly covered with residential property. A quarry is in the northwestern edge of the unit. An undeveloped area of parks and setbacks is in the south central and southeastern part of the unit. This unit contains 13 caves: Hunter's Lane Cave, Testudo Tube, Bluewater Cave #1, Bluewater Cave #2, TWASA Cave, Illex Cave, Buttercup Creek Cave, Godzilla Cave, Hideaway Cave, Salamander Squeeze Cave, Treehouse Cave, Whitewater Cave, and Flea Cave, which are all occupied by the Jollyville Plateau salamander. All caves except Hunter's Lane Cave, Testudo Tube, Bluewater Cave #1, and Bluewater Cave #2 are located in preserves set up as mitigation property under the Buttercup habitat conservation plan (HCP), which is held by the City of Austin. This HCP covers

adverse impacts to the endangered Tooth Cave ground beetle (*Rhadine persephone*). Although the salamander is not covered under the Buttercup HCP, the protection afforded these caves by the HCP provides some benefit for the species.

The Lakeline Mall HCP covers the Testudo Tube Cave location. As part of the mitigation for the Lakeline Mall HCP, Testudo Tube Cave must be protected and managed in perpetuity. Hunter's Lane Cave is located in Discovery Well Preserve, which is State land leased to the City of Cedar Park. This preserve was purchased by the Texas Department of Transportation (formally Texas Turnpike Authority Division) as mitigation for impacts to the Tooth Cave ground beetle from the construction of the U.S. Highway 183 alternate highway project. The mitigation actions from these HCPs and highway project provide some benefit to the Jollyville Plateau salamander by establishing preserve areas that limit development near the caves. Bluewater Cave #1 and Bluewater Cave #2 are located on public land within older development. All caves in this unit except Bluewater Cave #1 and Hunter's Lane Cave contain the Tooth Cave

ground beetle. The unit contains all the primary constituent elements essential for the conservation of the Jollyville Plateau salamander.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section of the proposed listing and critical habitat rule (77 FR 50768; August 22, 2012)).

The proposed critical habitat designation includes the caves. The unit was further delineated by drawing a circle with a radius of 980 ft (300 m) around the cave, representing the extent of the subterranean critical habitat.

#### Unit 22: Sylvia Spring Area Unit

Unit 22 consists of 238 ac (96 ha) of private, City of Austin, and Williamson County land in northern Travis County and southwestern Williamson County, Texas. The unit is located east of the intersection of Callanish Park Drive and Westerkirk Drive and north of the intersection of Spicewood Springs Road and Yaupon Drive. Spicewood Springs Road crosses the unit from southwest to east. Residential and commercial

development is found in most of the unit. An undeveloped stream corridor crosses the unit from east to west. This unit contains Small Sylvia Spring, Sylvia Spring Area 2, Sylvia Spring Area 3, Sylvia Spring Area 4, Spicewood Valley Park Spring, Tanglewood Spring, Tanglewood 2, and Tanglewood 3, which are occupied by the Jollyville Plateau salamander. Small Sylvia Spring, Sylvia Spring Area 2, Sylvia Spring Area 3, Sylvia Spring Area 4, and Spicewood Valley Park Spring are located on an unnamed tributary to Tanglewood Creek. Tanglewood Spring, Tanglewood 2, and Tanglewood 3 are located on Tanglewood Creek, a tributary to Bull

Creek. The unit contains the primary constituent elements essential for the conservation of the species.

The unit requires special management because of the potential for groundwater pollution from current and future development in the watershed, potential for vandalism, and depletion of groundwater (see *Special Management Considerations or Protection* section of the proposed listing and critical habitat rule (77 FR 50768; August 22, 2012)).

The proposed designation includes the spring outlets and outflow up to the high water line and 160 ft (50 m) of downstream habitat. The unit was further delineated by drawing a circle with a radius of 980 ft (300 m) around the springs, representing the extent of

the subterranean critical habitat. We joined the edges of the resulting circles.

**Amended Exclusions**

In our August 22, 2012, proposed rule (77 FR 50768), we stated that we would evaluate whether certain lands in the proposed critical habitat designation for Jollyville Plateau salamander in the Bull Creek 3 Unit (Unit 19 for the Jollyville Plateau salamander) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. We are now adding the following land in the proposed critical habitat for the Austin blind salamander to the list of areas we are considering for exclusion from the final critical habitat designation.

TABLE 3—AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT FOR THE AUSTIN BLIND SALAMANDER

Unit	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas considered for possible exclusion, in acres (hectares)
Unit 1: Barton Springs Unit .....	Barton Springs Pool HCP .....	120 ac (49 ha)	22 ac (9 ha)

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

*Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships*

We consider a current land management or conservation plan (HCP as well as other types) to provide adequate management or protection if it meets the following criteria:

- (1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;
- (2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and
- (3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

**Barton Springs Pool Habitat Conservation Plan**

We are considering the exclusion of non-Federal lands covered by the Barton Springs Pool HCP. We are requesting comments on the benefit to the Austin blind salamander from this HCP.

The Permittee (City of Austin) is authorized to take (kill, harm, or harass) the endangered Barton Springs salamander (*Eurycea sosorum*) at the four spring sites collectively known as Barton Springs, incidental to activities for the operation and maintenance of the pool and adjacent spring sites as described in the original Permittee's (City of Austin) application and habitat conservation plan. The Barton Springs Pool HCP currently requires the following measures for the mitigation of incidental take of the Barton Springs salamander during routine pool maintenance and cleaning. These measures are also being applied to the Austin blind salamander as if it were a listed species:

- Cleaning of the shallow end without lowering the entire pool.
- Visual searching for stranded salamanders after lowering the pool.
- Lowering of the beach.
- Cleaning of the fissures, the new "beach" habitat, and adjacent springs using low-pressure hoses.
- Installation of an underwater walkway and a stainless steel railing in the deep end.

- Maintenance of 11,000 square feet (1,022 square meters) of "beach" habitat.
- Restricting public access to Eliza and Sunken Garden (Old Mill) Springs.
- Daily inspections of all spring sites for vandalism, habitat disturbance, and exotic species.
- Implementation of a program to increase public awareness and community support for the salamanders.
- Establishment of a conservation and research fund for the salamanders.
- Reduce loadings of contaminants into Barton Springs from current development and activities in the Barton Springs Zone of the Edwards Aquifer.
- Creation of a captive breeding facility for the Barton Springs and Austin blind salamanders.

The measures described above will provide conservation benefits to the Austin blind salamander by minimizing the death of individuals during routine pool maintenance, preventing habitat disturbance from vandalism, and maintaining water quality in the springs.

**Draft Economic Analysis**

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the four central Texas salamanders. The DEA separates conservation measures into two distinct categories according to "without critical habitat" and "with critical habitat" scenarios. The "without

critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the four central Texas salamanders (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “FRAMEWORK FOR THE ANALYSIS” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the four central Texas salamanders over the next 23 years, which was determined to be the appropriate period for analysis, because limited planning information is available for most activities to forecast activity levels for projects beyond a 23-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of the four central Texas salamanders conservation efforts associated with the following categories of activity: (1) Development, (2) water management activities, (3) transportation projects, (4) utility projects, (5) mining, and (6) livestock grazing. Economic impacts are estimated for development, transportation, mining, and species and habitat management activities. No impacts are forecast for water management activities, utility projects, and livestock grazing activities. For these activities, no projects with a Federal nexus were identified within the study area.

Total present value impacts anticipated to result from the designation of all areas proposed as salamander critical habitat are approximately \$29 million over 23 years. All incremental costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations

and re-initiation of consultations for existing management plans. Proposed Unit 1 for the Austin blind salamander and proposed Unit 32 for the Jollyville Plateau salamander are likely to experience the greatest incremental impacts. Impacts in proposed Unit 1 for the Austin blind salamander are estimated at \$3.7 million in present value terms (13.0 percent of total present value impacts), and result from a portion of the consultation associated with the Mopac Expressway and approximately 21 consultations annually on development projects within proposed Unit 1 itself and the Lake Austin watershed. Impacts in proposed Unit 32 for the Jollyville Plateau salamander are estimated at \$2.9 million in present value terms (10.1 percent of total present value impacts), and result from a portion of the consultations associated with three transportation projects and approximately 17 consultations annually on development projects within proposed Unit 32 itself and the Walnut Creek watershed. Overall, consultations associated with development activities account for approximately 98.8 percent of the incremental impacts in this analysis.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

#### Required Determinations—Amended

In our August 22, 2012, proposed rule (77 FR 50768), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and E.O. 12630 (Takings).

#### 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 must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

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 if 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.

To determine if the proposed designation of critical habitat for the four central Texas salamanders would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as development, transportation, and mining activities as well as re-initiated programmatic consultations for five existing conservation plans. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the four central Texas salamanders are present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the four central Texas salamanders. Impacts to transportation activities are expected to be incurred largely by Federal and State agencies. These entities are not considered small. Also, re-initiations of consultations regarding the Balcones Canyonlands Preserve, Buttercup Creek HCP, Four Points HCP, Lakeline Mall HCP, and Williamson County Regional HCP are not anticipated to involve small entities. However, incremental impacts associated with residential and commercial development and surface mining may be borne by small entities. In regards to development and assuming the average small entity has annual

revenues of approximately \$4.6 million, the per-entity cost to participate in a consultation represents approximately 0.02 percent of annual revenues if each consultation is undertaken by a different small entity. If all consultations occurring in a given year (approximately 163) are undertaken by the same developer, then the cost to participate in these consultations represents approximately 3.1 percent of annual revenues. In regards to mining, there are four small businesses engaged in limestone mining, and we anticipate that two of these small entities could incur incremental administrative costs as a result of a critical habitat designation. Assuming the average small entity has annual revenues of approximately \$10 million, the per-entity cost to participate in a consultation represents approximately less than 0.01 percent of annual revenues. Even in the event that a single small entity bears third-party costs for both consultations in a single year, the total impact represents less than 0.02 percent of annual revenues. Overall, we do not believe that, if made final, the designation of critical habitat for the four central Texas salamanders will have a significant impact to the small business sector. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service’s current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service’s current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and

qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

#### *Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the four central Texas salamanders in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or 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. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the four central Texas salamanders. Because the Act’s critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the economic analysis assessment and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a



takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the four central Texas salamanders does not pose significant takings implications for lands within or affected by the designation.

**Authors**

The primary authors of this notice are the staff members of the Austin Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

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

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

**Proposed Regulation Promulgation**

Accordingly, we propose to further amend the proposed amendments to part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as published on August 22, 2012, at 77 FR 50768, as set forth below:

**PART 17—[AMENDED]**

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

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

■ 2. Amend § 17.95(d), as proposed to be amended at 77 FR 50768, by:

■ a. Revising proposed paragraphs (d)(5), (d)(7), (d)(9), (d)(11), and (d)(15) of the proposed entry for the

“Georgetown Salamander (*Eurycea naufragia*)” and

■ b. Revising proposed paragraphs (d)(5) and (d)(8), removing and reserving proposed paragraphs (d)(9) and (d)(10), revising proposed paragraphs (d)(14), (d)(19), and (d)(27), removing and reserving proposed paragraph (d)(28), and revising proposed paragraph (d)(33) of the proposed entry for the “Jollyville Plateau Salamander (*Eurycea tonkawae*)”, to read as follows:

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

\* \* \* \* \*

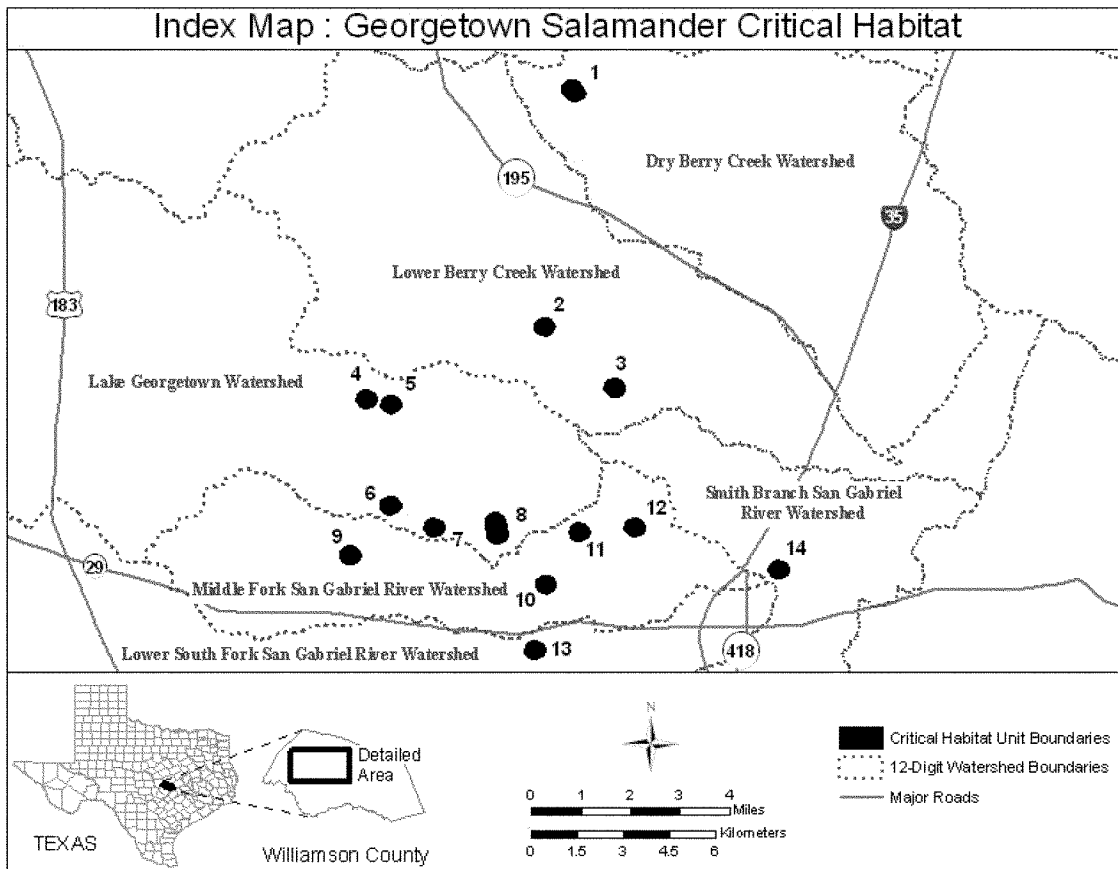
(d) *Amphibians.*

\* \* \* \* \*

Georgetown Salamander (*Eurycea naufragia*)

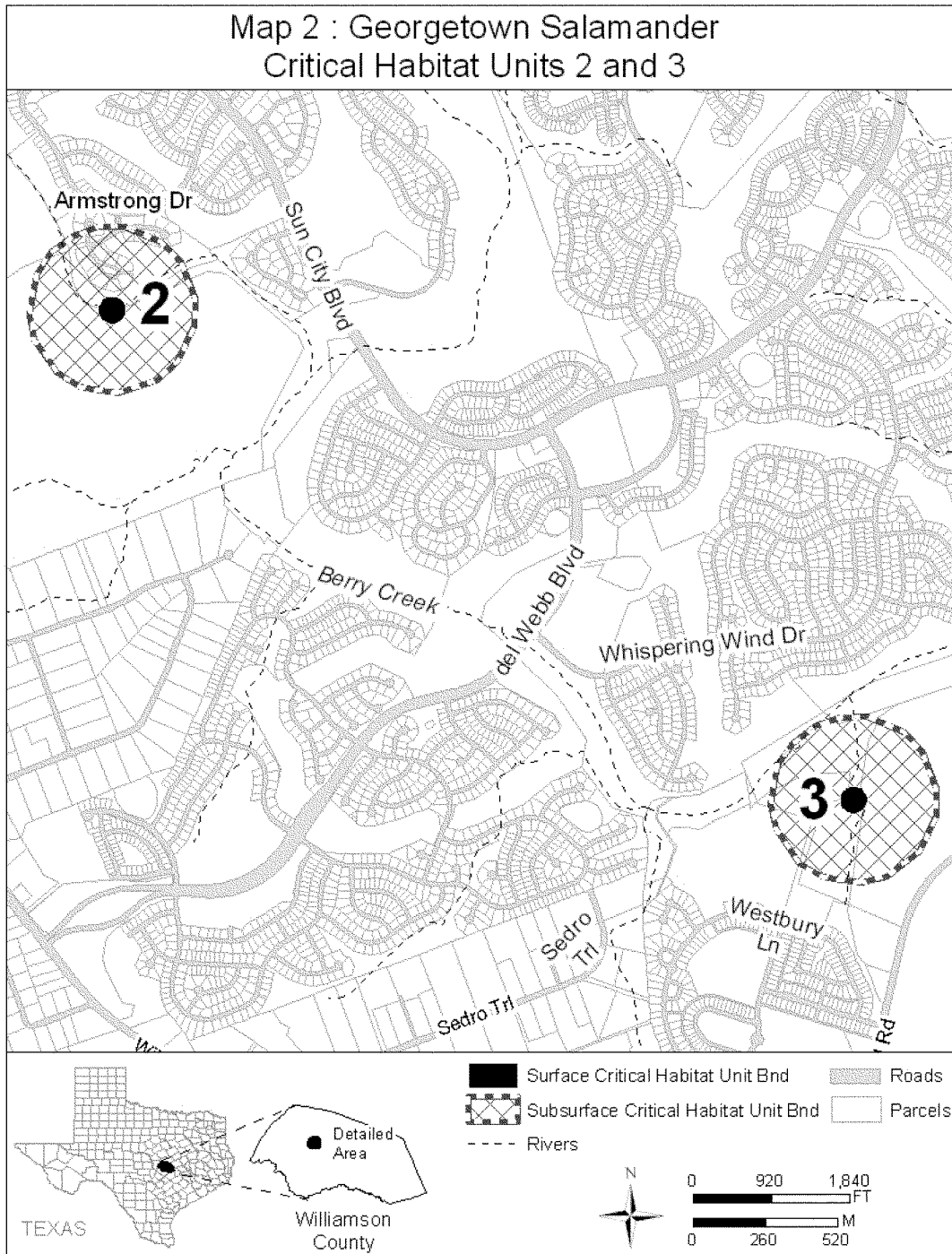
\* \* \* \* \*

(5) Index map follows:



\* \* \* \* \*

(7) Unit 2: Cowen Creek Spring Unit, Williamson County, Texas. Map of Units 2 and 3 follows:



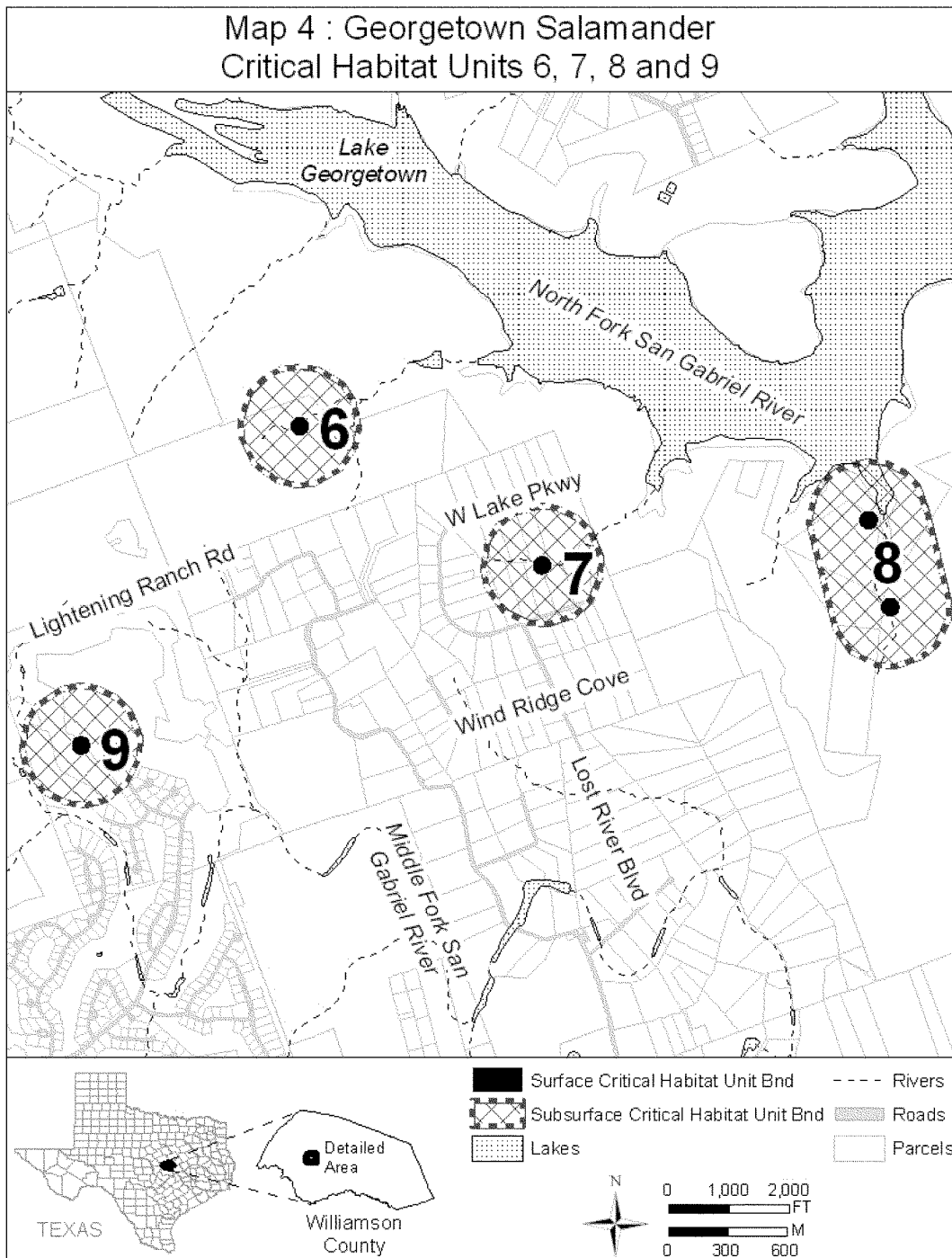
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(9) Unit 4: Walnut Spring  
Unit, Williamson County, Texas. Map of  
Units 4 and 5 follows:



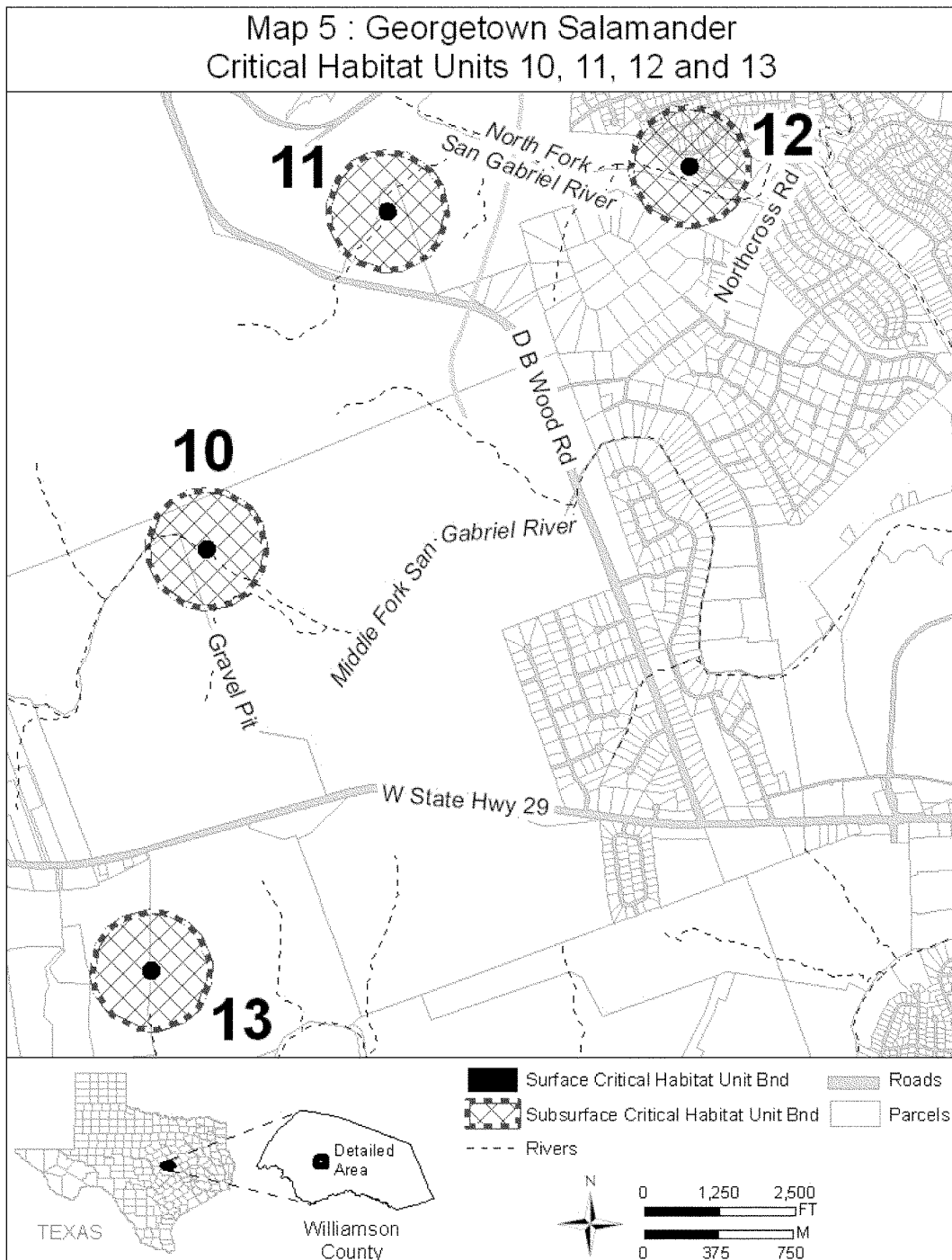
\* \* \* \* \*

(11) Unit 6: Hogg Hollow Spring Unit,  
Williamson County, Texas. Map of  
Units 6, 7, 8, and 9 follows:



\* \* \* \* \*

(15) Unit 10: Avant Spring Unit,  
Williamson County, Texas. Map of  
Units 10, 11, 12, and 13 follows:

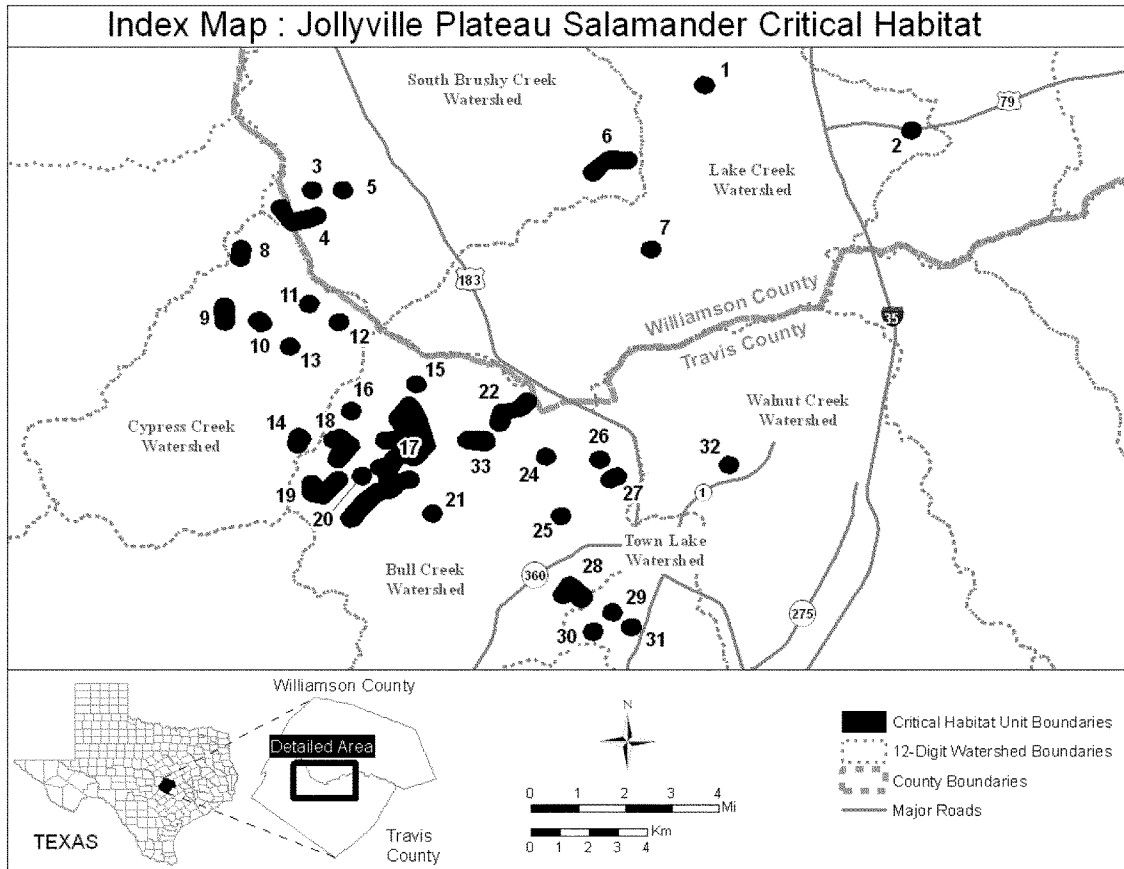


\* \* \* \* \*

Jollyville Plateau Salamander  
(*Eurycea tonkawae*)

\* \* \* \* \*

(5) Index map follows:



\* \* \* \* \*

(8) Unit 3: Buttercup Creek Unit,  
Williamson and Travis Counties, Texas.  
Map of Unit 3 follows:



\* \* \* \* \*

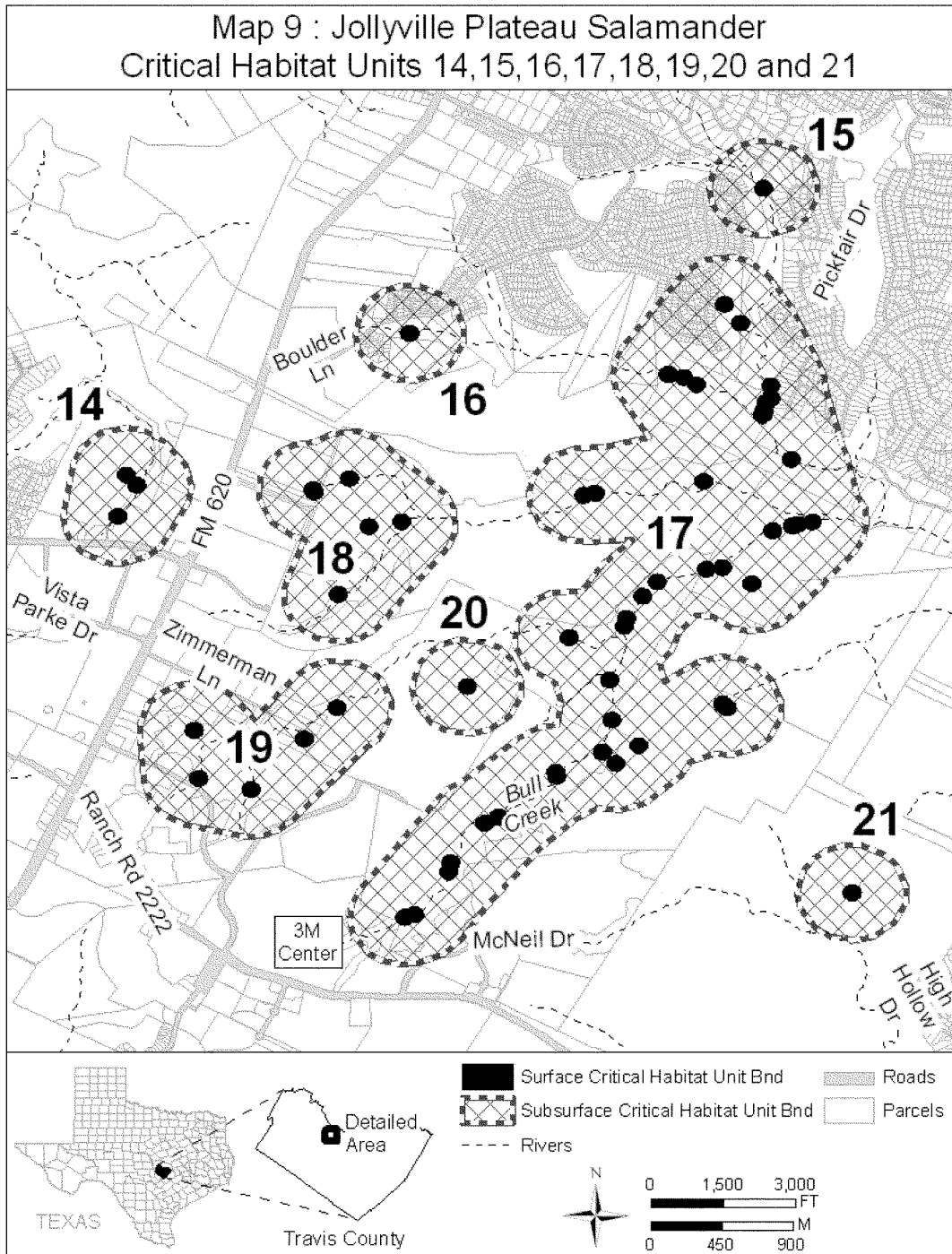
(14) Unit 9: Wheless Spring Unit,  
 Travis County, Texas. Map of Units 9  
 and 10 follows:



\* \* \* \* \*

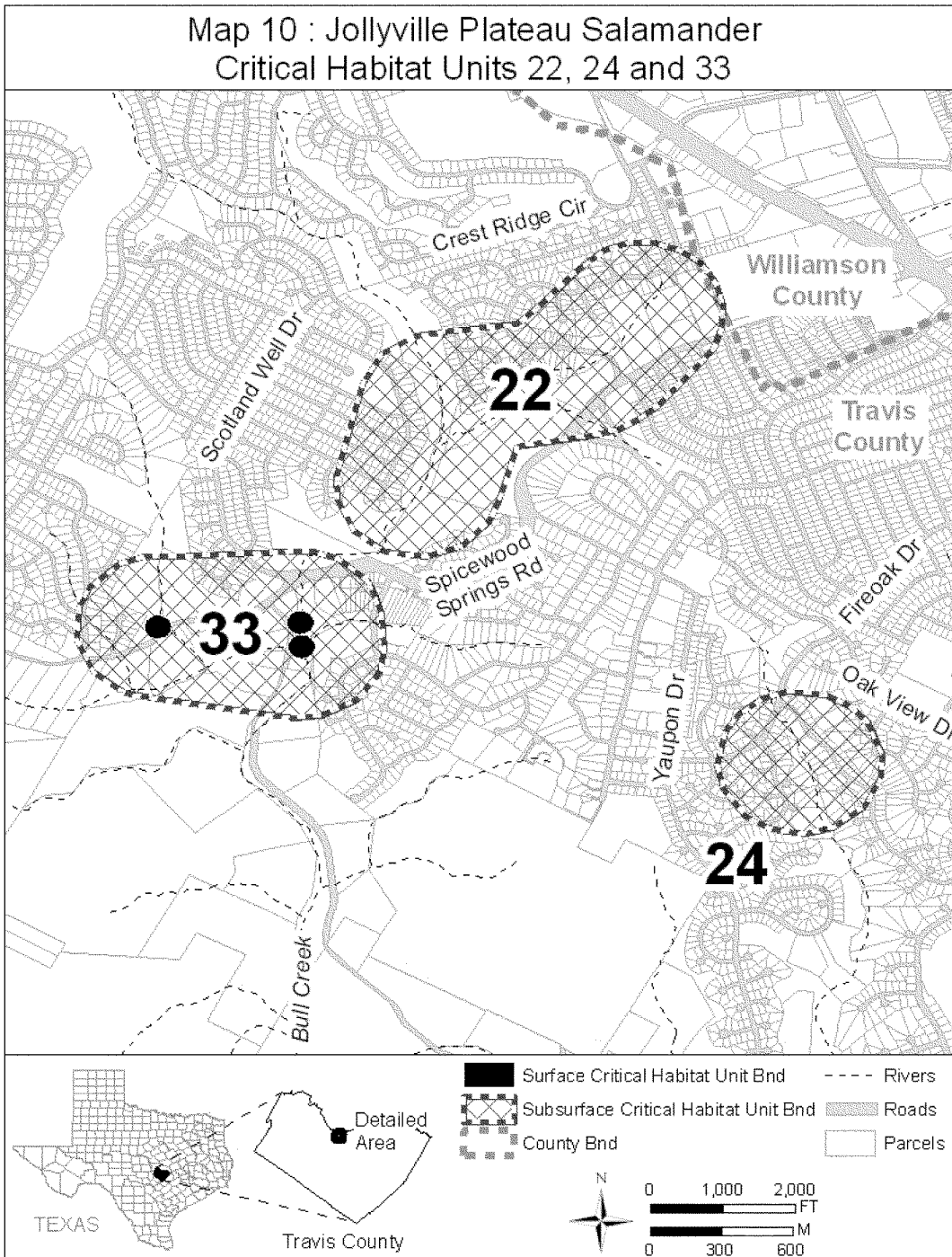
(19) Unit 14: Kretschmarr Unit, Travis County, Texas. Map of Units 14, 15, 16, 17, 18, 19, 20, and 21 follows:





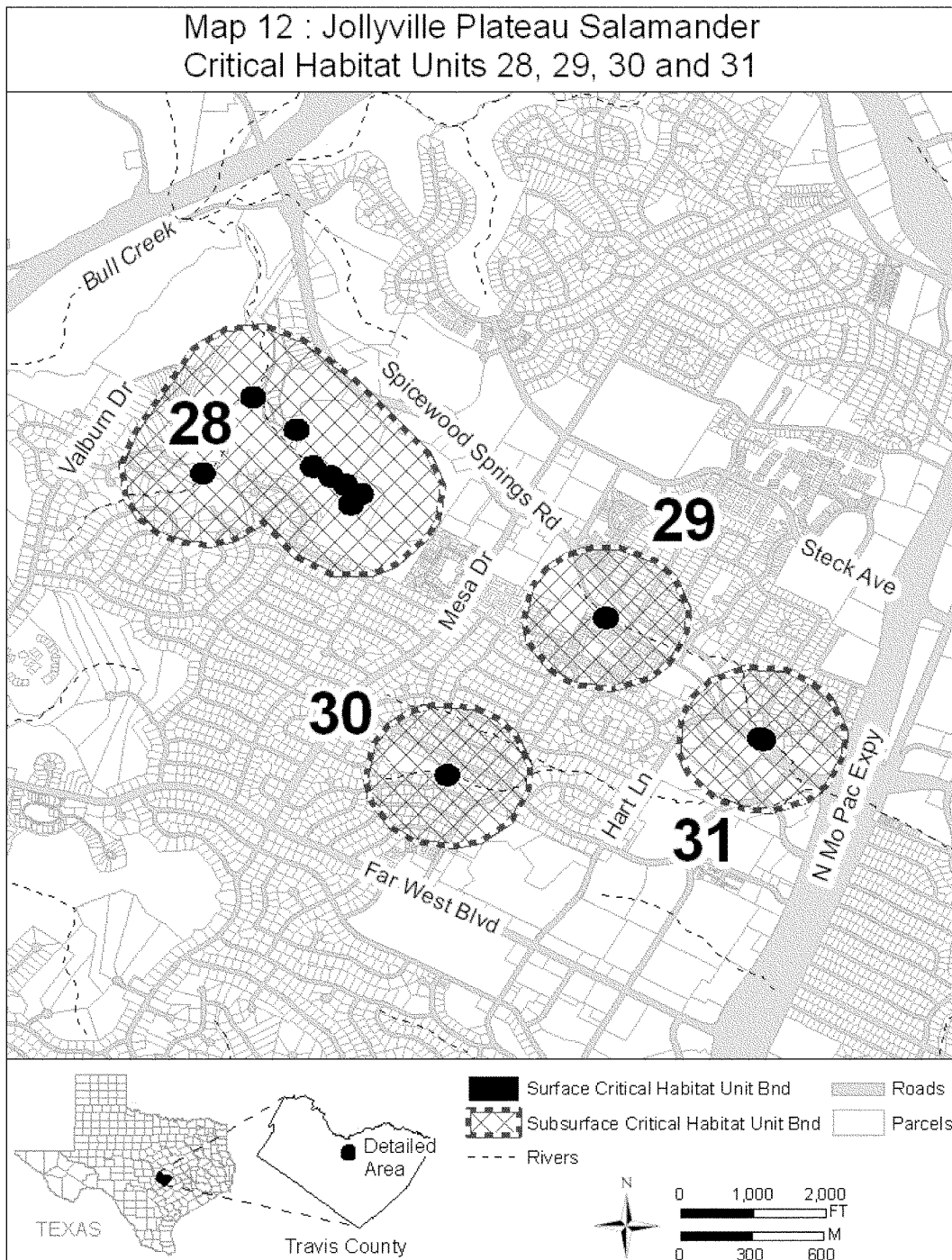
\* \* \* \* \*

(27) Unit 22: Sylvia Spring Area Unit, Travis County, Texas. Map of Units 22, 24, and 33 follows:



\* \* \* \* \*

(33) Unit 28: Stillhouse Unit, Travis County, Texas. Map of Units 28, 29, 30, and 31 follows:



\* \* \* \* \*

Dated: January 15, 2013.

**Michael J. Bean,**

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

[FR Doc. 2013-01307 Filed 1-24-13; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 622**

**RIN 0648-AS65**

**Fisheries of the Caribbean, Gulf, and  
South Atlantic; Aquaculture**

**AGENCY:** National Marine Fisheries  
Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA),  
Commerce.

**ACTION:** Supplemental Notice of Intent  
(NOI) to prepare a supplement to the  
final programmatic environmental  
impact statement (SFPEIS); request for  
comments.

**SUMMARY:** The Gulf of Mexico Fishery  
Management Council (Council)  
previously published a NOI for the  
Fishery Management Plan for Regulating  
Offshore Marine Aquaculture in the