

Social Security Act, as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (63 FR 58341). We are extending the comment period at the request of several organizations.

DATES: To assure consideration, public comments must be delivered to the address provided below by January 11, 1999.

ADDRESSES: Please mail or deliver your written comments to the following address: Health Resources and Services Administration, Bureau of Health Professions, Division of Quality Assurance, Room 8-55, Attention: OIG-46-P, 5600 Fishers Lane, Rockville, Maryland 20857.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX). In commenting, please refer to file code OIG-46-P.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619-1306.

SUPPLEMENTARY INFORMATION: The proposed regulations are designed to implement section 221(a) of the HIPAA, which specifically direct the Secretary to establish a national health care fraud and abuse data collection program for the reporting and disclosing of certain final adverse actions taken against health care providers, suppliers or practitioners; and maintain a data base of final adverse actions taken against health care providers, suppliers and practitioners. We indicated in the preamble of that document that we are allowing a 60-day public comment period during which time interested parties could submit their comments and recommendations regarding the implementation of the Healthcare Integrity and Protection Data Bank. The Department agreed to consider all comments received on or before December 29, 1998.

Since publication of the proposed rule, we have received requests from several outside organizations and associations to extend the existing comment period beyond the 60-day period. Because of our desire to work with affected outside organizations and associations in considering their recommendations in establishing viable and operational data bank, and concerns from some parties that the holiday season has hampered their ability to poll constituents in a timely and effective manner to provide comprehensive comments, we have agreed to extend the public comment period to this notice of proposed rulemaking until January 11, 1999.

Dated: December 8, 1998.

Michael Mangano,

Principal Deputy Inspector General.

Approved: December 21, 1998.

Donna E. Shalala,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF36

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Cactus Ferruginous Pygmy-Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*). A total of approximately 730,565 acres of riverine riparian habitat and upland habitat are proposed. Proposed critical habitat is in Pima, Cochise, Pinal, and Maricopa counties, Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until March 1, 1999. We will hold three public hearings on this proposed rule; we will publish the dates and locations of these hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

ADDRESSES: Send comments and information to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021-4951. Comments and materials received will

be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640-2720 ext. 240; facsimile 602/640-2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (referred to as "pygmy-owl" in this proposed rule) is in the Order Strigiformes and the Family Strigidae. It is a small bird, approximately 17 centimeters (6 3/4 inches) long. Males average 62 grams (g) (2.2 ounces (oz)), and females average 75 g (2.6 oz). The pygmy-owl is reddish-brown overall, with a cream-colored belly streaked with reddish brown. Some individuals are grayish brown, rather than reddish brown. The crown is lightly streaked, and paired black-and-white spots on the nape suggest eyes. The ears lack tufts, and the eyes are yellow. The tail is relatively long for an owl and is colored reddish brown with darker brown bars. The pygmy-owl is diurnal (active during daylight), and its call, heard primarily near dawn and dusk, is a monotonous series of short notes.

The cactus ferruginous pygmy-owl is one of four subspecies of the ferruginous pygmy-owl. It occurs from lowland central Arizona south through western Mexico to the States of Colima and Michoacan, and from southern Texas south through the Mexican States of Tamaulipas and Nuevo Leon. Only the Arizona population of *Glaucidium brasilianum cactorum* is listed as an endangered species.

The pygmy-owl in Arizona occurs in a variety of scrub and woodland communities, including riverbottom woodlands, woody thickets ("bosques"), and Sonoran desertscrub. Unifying habitat characteristics among these communities are fairly dense woody thickets or woodlands, with trees and/or cacti large enough to provide nesting cavities. The pygmy-owl occurs at low elevations, generally below 1,200 meters (m) (4,000 feet (ft)) (Swarth 1914, Karalus and Eckert 1974, Monson and Phillips 1981, Johnsgard 1988, Enriquez-Rocha *et al.* 1993).

The pygmy-owl's primary habitats were riparian cottonwood (*Populus fremontii*) forests, mesquite bosques, and Sonoran desertscrub, but the subspecies currently occurs primarily in Sonoran desertscrub associations of palo verde (*Cercidium* spp.), bursage (*Ambrosia* spp.), ironwood (*Olneya tesota*), mesquite (*Prosopis velutina*, and

P. glandulosa), acacia (*Acacia* spp.), and giant cacti such as saguaro (*Carnegiea gigantea*), and organ pipe (*Stenocereus thurberi*) (Gilman 1909, Bent 1938, van Rossem 1945, Phillips *et al.* 1964, Monson and Phillips 1981, Johnson-Duncan *et al.* 1988, Millsap and Johnson 1988). Primary prey include various reptiles, insects, birds, and small mammals (Proudfoot 1996).

Previous Federal Action

We included *Glaucidium brasilianum cactorum* in our Animal Notice of Review as a category 2 candidate species throughout its range on January 6, 1989 (54 FR 554). Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. After soliciting and reviewing additional information, we elevated *G. b. cactorum* to category 1 status throughout its range in our November 21, 1991, notice of review (56 FR 58804). Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On May 26, 1992, a coalition of conservation organizations (Galvin *et al.* 1992) petitioned us to list the pygmy-owl as an endangered species under the Act. The petitioners also requested designation of critical habitat. In accordance with section 4(b)(3)(A) of the Act, on March 9, 1993, we published a finding that the petition presented substantial scientific or commercial information indicating that listing of the pygmy-owl may be warranted and commenced a status review of the subspecies (58 FR 13045). As a result of information collected and evaluated during the status review, including information collected during a public comment period, we published a proposed rule to list the pygmy-owl as endangered in Arizona and threatened in Texas on December 12, 1994 (59 FR 63975). We proposed designation of critical habitat in Arizona. After a review of all comments received in response to the proposed rule, we

published a final rule on March 10, 1997 (62 FR 10730), listing the pygmy-owl as endangered in Arizona. We determined that listing in Texas was not warranted. We also determined that critical habitat designation was not prudent.

On October 31, 1997, the Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Secretary of the Department of the Interior (Secretary) for failure to designate critical habitat for the cactus ferruginous pygmy-owl and the Huachuca water umbel (*Lilaeopsis schaffneriana* ssp. *recurva*), a plant (Southwest Center for Biological Diversity v. Bruce Babbitt, Secretary of the Department of the Interior; CIV 97-704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating: "There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available."

On November 25, 1998, in response to a motion by the Plaintiffs requesting clarification of the October 7, 1998, order, Judge Marquez further ordered "that within 30 days of the date of this Order, the Secretary shall issue the Proposed Rules for designating critical habitat for the pygmy-owl and water umbel * * * and that within six months of issuing the Proposed Rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel."

Absent the court's order, the processing of this proposed rule would not conform with our Fiscal Year 1998 and 1999 Listing Priority Guidance, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. The Service's Southwest Region is currently working on Tier 2 actions; however, we

are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic 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. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires us to base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas as critical habitat, provided the exclusion will not result in the extinction of the species.

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the essential habitat features (primary constituent elements described below) and that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the added protection that may be provided under section 7, the Act does not provide other

forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not afford any protection against such activities.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. "Jeopardize the continued existence" is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" of critical habitat occurs when a Federal action appreciably reduces the value of critical habitat for the survival and recovery of the listed species. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act generally requires that not all areas potentially occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, or rearing of offspring; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the pygmy-owl are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, and sheltering. The primary constituent elements are found, or could develop, in areas that support or have the potential to support riparian forests, riverbottom woodlands, xeriparian (dry riparian) forests, plains and desert grassland, and the Arizona upland subdivision of Sonoran desertscrub (Turner and Brown 1982). Within these vegetative communities, specific plant associations that contain or could develop the primary constituent elements include those dominated by cottonwood, willow (*Salix* spp.), ash (*Fraxinus velutina*), mesquite, palo verde, ironwood, saguaro cactus, organ pipe cactus, creosote (*Larrea tridentata*), acacia, and/or hackberry (*Celtis* spp.).

In river floodplains, the presence of surface or subsurface water is critical in maintaining pygmy-owl habitat. Riverine riparian woodlands and thickets are dependent on availability of groundwater at or near the surface. Surface or subsurface moisture may also be important in maintaining various species comprising the pygmy-owl's prey base.

Methods

In developing this critical habitat proposal for the pygmy-owl, we attempted to form an interconnected system of suitable and potential habitat areas extending from southern Arizona to the northernmost recent pygmy-owl occurrence. Areas proposed as critical habitat meet the definition of critical habitat under section 3 of the Act in that

they are areas within the geographical area occupied by the species that are essential to the conservation of the species and in need of special management considerations or protection.

In an effort to map areas essential to the conservation of the species, we used data on known pygmy-owl locations to initially identify important areas. We then connected these areas based on the topographic and vegetative features believed most likely to support resident pygmy-owls and/or facilitate movement of birds between known habitat areas. Facilitating movement of birds between habitat areas is important for dispersal and gene flow. In selecting areas, we avoided private lands to the extent possible, and instead concentrated on public (State and Federal) lands. However, we are proposing designation as critical habitat some important privately owned areas, such as the area northwest of Tucson which supports the greatest known concentration of pygmy-owls in Arizona.

In selecting areas for inclusion in proposed critical habitat, we made an effort to avoid developed areas such as towns, agricultural lands, and other lands unlikely to contribute to pygmy-owl conservation. Given the short period of time in which we were required to complete this proposal, we were unable to map critical habitat in sufficient detail to exclude all such areas. However, within the delineated critical habitat boundaries, only lands containing, or having the potential to develop, the primary constituent elements described above are considered critical habitat. Existing features and structures within the proposed area, such as buildings, roads, aqueducts, railroads, and other features, do not contain, and do not have the potential to develop, the primary constituent elements and are not considered critical habitat.

In selecting areas to propose as critical habitat, we attempted to exclude areas believed to be adequately protected, or where current management is compatible with pygmy-owls and is likely to remain so into the future. We excluded National Park lands (Organ Pipe Cactus National Monument and Saguaro National Park) and national wildlife refuges (Cabeza Prieta and Buenos Aires National Wildlife Refuges). We also excluded non-Federal lands covered by a legally operative incidental take permit for pygmy-owls issued under section 10(a)(1)(B) of the Act. However, we did not exclude areas currently managed in a manner compatible with pygmy-owls where

such management may not be assured in the future (e.g., county and State parks).

In addition, lands of the Tohono O'odham Indian Reservation are not included in this proposal. We are aware that pygmy-owls and pygmy-owl habitat likely exist on the Reservation, and we believe these Tribal lands are important to the species' continued existence in Arizona. However, the short amount of time given by the court to propose critical habitat precluded us from adequately coordinating with the Tribe to obtain pygmy-owl location and habitat information. In addition, we were unable to assess whether current or future tribal management is likely to maintain pygmy-owls into the future, although the probable existence of both pygmy-owls and pygmy-owl habitat lead us to believe that current management may be compatible with the species. In accordance with Secretarial Order 3206: American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act, subsequent to this proposal, we will coordinate with the Tribe to determine whether any Tribal lands are essential for the conservation of the species and require special management considerations or protection.

We did not propose all pygmy-owl historical habitat as critical habitat. We proposed those areas that we believe are

essential for the conservation of the pygmy-owl and in need of special management or protection.

In summary, the proposed critical habitat areas described below, and protected areas either known or suspected to contain some of the primary constituent elements but not proposed as critical habitat (e.g., National Park land, national wildlife refuge lands, etc.), constitute our best assessment of areas needed for the species' conservation. As described above, we will coordinate with the Tohono O'odham Indian Tribe to determine whether any Tribal lands are essential for the conservation of the species and require special management considerations or protection. Also, we recently appointed the Cactus Ferruginous Pygmy-Owl Recovery Team that will develop a recovery plan for the species. The experts on this team will conduct a far more thorough analysis than we were able to conduct in the short amount of time allowed by the Court Order. Upon the team's completion of a recovery plan, we will evaluate the plan's recommendations and reexamine if and where critical habitat is appropriate.

Proposed Critical Habitat Designation

In determining areas that are essential for the survival and recovery of the species, we used the best scientific

information obtainable in the time allowed by the court. This information included habitat suitability and site-specific species information. To date, limited survey effort or research has been done to identify and define specific habitat needs of pygmy-owls in Arizona or to determine their distribution. Only preliminary habitat assessment work has begun over small portions of the State, primarily on Bureau of Land Management (BLM) lands. We emphasized areas containing most of the verified pygmy-owl occurrences, especially recent ones. In order to maintain genetic and demographic interchange that will help maintain the viability of a regional metapopulation, we included areas that allow movement between areas supporting pygmy-owls.

Table 1 shows the approximate acreage of proposed critical habitat by county and land ownership. Critical habitat proposed for the pygmy-owl includes river floodplains and Sonoran desertscrub communities in Pima, Cochise, Pinal, and Maricopa Counties, Arizona. To provide additional information, we have grouped areas proposed as critical habitat into critical habitat units (see maps). A brief description of each unit and reasons for proposing as critical habitat are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT ACREAGE BY COUNTY AND LAND OWNERSHIP

[Note: Acreage estimates are from maps cited in legal descriptions]

| | Pima County | Cochise County | Pinal County | Maricopa County | Total |
|---------------------------------|-------------|----------------|--------------|-----------------|---------|
| Forest Service | 0 | 0 | 4,160 | 32,840 | 37,000 |
| Bureau of Land Management | 21,070 | 0 | 90,640 | 0 | 111,710 |
| State | 154,750 | 2,420 | 258,005 | 0 | 420,175 |
| Private | 60,060 | 2,420 | 74,400 | 100 | 136,980 |
| Other* | 20,700 | 0 | 4,000 | 0 | 24,700 |
| Total | 261,580 | 4,840 | 431,205 | 32,940 | 730,565 |

* Includes: Bureau of Reclamation, Tucson Mountain County Park, Department of Defense.

Unit 1

This unit lies between Buenos Aires National Wildlife Refuge and the Tohono O'odham Indian Reservation. This unit is primarily State Trust lands, with some dispersed private ownership, and contains upland habitats and washes that are suitable for pygmy-owls. This area is important because it is close to recent pygmy-owl occurrences on the nearby refuge, and because it would provide additional opportunities for demographic and genetic interchange between pygmy-owls in Mexico and the United States as well as expansion of populations for recovery. Proposed

critical habitat in this area, together with protected lands on the refuge and habitat on the Reservation, constitutes a large block of pygmy-owl habitat.

Unit 2

This unit connects habitat on the Tohono O'odham Indian Reservation to habitat in Saguaro National Park West and Tucson Mountain County Park. Ownership in this area is primarily BLM, State Trust, Bureau of Reclamation, Pima County, and some private. The area consists of Sonoran desertscrub and mesquite bosques interspersed by washes. This east-west

habitat corridor, together with the "Garcia Strip" of the Reservation, includes suitable habitat for occupancy, movement, and genetic interchange of pygmy-owls between the Reservation and the western Tucson region.

Unit 3

This unit connects suitable habitat in Unit 2 and Saguaro National Park West to Unit 4, which has the highest known concentration of pygmy-owls in Arizona. The land ownership in this area is mostly private. This area includes a recent pygmy-owl site west of Interstate 10 and provides a possible

connection to habitat in the northwest Tucson region. Because of existing and past land management practices and development, this area contains the narrowest habitat linkage between other areas proposed for critical habitat. Few options currently exist for movement of pygmy-owls in this portion of their known range based on our limited knowledge of their movement between areas at this time (Scott Richardson, Arizona Game and Fish Department (AGFD), pers. comm. 1998).

Unit 4

This unit is located in the northwest portion of Tucson north of Interstate 10 and contains the highest number of known pygmy-owls in Arizona. This unit contains mostly private and county lands. The areas proposed for critical habitat include known locations of pygmy-owls and adjacent habitats and is bounded by La Cholla Boulevard to the east, Cortaro Road to the south, Interstate 10 to the west, and the Tortolita Mountains to the north. In the immediate Tucson area, and to the south of Unit 4, very little suitable habitat remains due to residential, commercial and agricultural development. Historically, these upland and riparian areas may have supported pygmy-owls. The area proposed for critical habitat contains stands of ironwood and saguaro, mesquite bosques, and several washes, and includes the most contiguous and highest quality pygmy-owl habitat based on current information (Scott Richardson, AGFD, pers. comm. 1998).

Units 5A and 5B

Unit 5 includes two habitat corridors to connect habitat in the northwest Tucson region to riparian habitats to the north on the Gila River (5A) and to the east on San Pedro River (5B). Land ownership is mostly BLM, State Trust, and private. This area also includes recent pygmy-owl occurrences in southern Pinal County, although only a limited number of surveys have been conducted to determine if pygmy-owls are present in this area. Relatively intact riparian woodland habitats still remain along portions of the Gila and San Pedro rivers. These units contain historic pygmy-owl locations and/or areas thought to contain suitable upland habitat (Dave Krueper, BLM, pers. comm. 1998).

Limited habitat assessment has been completed within these corridors and few historic or current pygmy-owl occurrences have been documented. However, the BLM has conducted some habitat assessments on their lands in this area and rated the habitat suitability

for pygmy-owls as moderate to high (David Krueper, pers. comm. 1998). We included these two corridors because they constitute areas for dispersal and survival. Where possible, we avoided some of the higher elevation areas which likely contain lower quality habitat.

We are only beginning to understand the importance of upland habitat to the pygmy-owl. Although historical observations of pygmy-owls were almost exclusively in riparian woodlands (Breninger 1898 *in* Bent 1938), almost all of the recent records of pygmy-owls have been in Sonoran desertscrub and mesquite bosque upland areas and washes. Based on the current information, we believe these two corridors (5A and 5B) provide the highest potential for supporting resident and dispersing pygmy-owls through this area. Without these habitat linkages, demographic and genetic connectivity and exchange may not be maintained between known populations in the northwest Tucson region and riparian habitats in the Gila and San Pedro rivers.

Unit 6

This unit includes the riparian woodlands of the middle and lower San Pedro River and a portion of the Gila River. There were four pygmy-owls documented in the mid-1980s from lower San Pedro River woodlands. Similar riparian woodlands and associated upland habitats with saguaro cactus are present along the San Pedro upstream (to the south) to approximately the town of Cascabel.

The San Pedro River riparian corridor connects to the Gila River to the north. This section of the Gila River also contains riparian woodland habitats which we believe are suitable for pygmy-owls (Roy Johnson pers. comm. 1998). We are proposing these areas as critical habitat because of the importance, based on the early records of naturalists during the late 1800s and early 1900s, of riparian woodland habitats, the presence of suitable habitat, and the linkage these areas provide to other historical locations and suitable habitat to the north.

Unit 7

This unit links riparian habitat on the Gila River to other upland habitats and ultimately to the remaining woodland habitat along the Salt River where pygmy-owls were collected in the 1940s and 1950s and where this species was recorded in the early 1970s. Land ownership in this area is primarily BLM, State Trust, Forest Service, and some dispersed private. Although recent

surveys have not located pygmy-owls in riparian areas in this unit, riparian woodland habitats remain along portions of the Salt River in this area (Roy Johnson pers. comm. 1998). In delineating this unit, we considered elevation, topographic features, and existing developed areas and determined that a habitat linkage that includes Sonoran upland desertscrub will provide connectivity and suitable habitats between riparian woodland habitats along the Gila and Salt rivers.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed or critical habitat is designated subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently

designated. Consequently, some Federal agencies may request conferencing with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). We may also prepare a formal conference report to address the effects on proposed critical habitat from issuance of an incidental take permit, under section 10(a)(1)(B) of the Act.

Activities on Federal lands that may affect the pygmy-owl or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the pygmy-owl is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

(1) Removing, thinning, or destroying vegetation, whether by burning or mechanical, chemical, or other means (e.g., woodcutting, bulldozing, overgrazing, construction, road building, mining, herbicide application, etc.);

(2) Water diversion or impoundment, groundwater pumping, or other activity that alters water quality or quantity to an extent that riparian vegetation is significantly affected; and

(3) Recreational activities that appreciably degrade vegetation.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone 505-248-6920, facsimile 505-248-6922).

Designation of critical habitat could affect Federal agency activities including, but not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies; and

(3) Regulation of grazing, mining, or recreation by the BLM or Forest Service.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an economic analysis for this proposal prior to a final determination.

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

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

any threats to the species due to designation;

(2) Specific information on the amount and distribution of pygmy-owls and habitat, and what habitat is essential to the conservation of the species and why;

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

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

(5) Economic and other values associated with designating critical habitat for the pygmy-owl such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs).

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

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule three public hearings on this proposal. We will announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Executive Order 12866

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that

interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Following issuance of this proposed rule, we will prepare an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species. In the economic analysis, we will address any possible inconsistencies with other agencies' actions and any effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues.

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

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based

enterprises to compete with foreign-based enterprises.

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

In the economic analysis, we will address any effects to small governments resulting from designation of critical habitat and any Federal mandate of \$100 million or greater in any year.

5. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not "take" private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

6. Federalism

This proposed rule, if made final, will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists. If our economic analysis reveals that the economic impacts of designating any area of State concern as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor also will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

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

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. We have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. This proposed designation of critical habitat, and the resulting final determination, will not require any actions that will affect the environment. No construction or destruction in any form is required under the provisions of critical habitat.

10. 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) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that "Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands." Subsequent to this proposal, we will coordinate with the Tribe and analyze the need to designate critical habitat on Tribal lands. If, as a result of such coordination and analysis, we determine that some Tribal lands should be proposed as critical habitat, we will amend the current proposal or issue a separate proposal.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Arizona Ecological Services Field Office (see ADDRESSES section).

Author. The primary authors of this notice are Mike Wrigley and Tom Gatz (see ADDRESSES section); and Steve Spangle and Ric Riester, Southwest Regional Office, P.O. Box 1306, Albuquerque, New Mexico 87103.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.11(h) revise the entry for “Pygmy-owl, cactus ferruginous” under “BIRDS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|--|--|------------------------------------|--|--------|---------------|------------------|---------------|
| Common name | Scientific name | | | | | | |
| <i>Birds</i> | | | | | | | |
| * Pygmy-owl, cactus ferruginous. * | * <i>Glaucidium brasilianum cactorum</i> . * | * U.S.A. (AZ, TX), Mexico. * | * AZ * | E | * 600 * | 17.95(b) | * NA * |

3. In § 17.95 add critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) under paragraph (b) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(b) *Birds*.
* * * * *

Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)

1. Critical habitat units are depicted for Pima, Cochise, Pinal, and Maricopa counties, Arizona, on the maps below.

2. Within these areas, the primary constituent elements are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, roosting, and sheltering. The primary constituent elements are found, or could develop, in areas that support, or have the potential to support, riparian forests, riverbottom woodlands, xeroriparian forests, plains and desert grassland, and the Arizona upland subdivision of Sonoran desertscrub (Turner and Brown 1982). Within these vegetative communities, specific plant associations that contain, or could develop, the primary constituent elements include those dominated by cottonwood (*Populus fremontii*), willow (*Salix* spp.), ash (*Fraxinus velutina*), mesquite (*Prosopis velutina*, and *P. glandulosa*), palo verde (*Cercidium* spp.), ironwood (*Olneya tesota*), saguaro cactus (*Carnegiea giganteus*), organ pipe cactus (*Stenocereus thurberi*), creosote (*Larrea tridentata*), acacia (*Acacia* spp.), and/or hackberry (*Celtis* spp.).

3. Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for cactus ferruginous pygmy-owl issued under section 10(a) of the Act.

Map Unit 1: Pima County, Arizona. From BLM map Sells, Ariz. 1979. Atascosa Mts., Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 17 S., R. 8 E., secs. 1 to 3, E½ sec. 4, E½ sec. 9, secs. 10 to 16, 21 to 36;

T. 17 S., R. 9 E., that portion of sec. 1 lying west of St. Hwy 286, secs. 2 to 10, those portions of secs. 11, 12, and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23 and 26 lying west of St. Hwy 286, secs. 27 to 34, that portion of sec. 35 lying west of St. Hwy 286; T. 18 S., R. 7 E., sec. 1, those portions of secs. 2 and 11 lying east of Papago Indian Reservation Bdy, sec. 12, those portions of secs. 13, 14, 24, 25, and 36 lying east of Papago Indian Reservation Bdy; T. 18 S., R. 8 E., secs. 1 to 36; T. 18 S., R. 9 E., that portion of sec. 2 lying west of Hwy 286, secs. 3 to 10, those portions of secs. 11 and 14 lying west of St. Hwy 286, secs. 15 to 22, those portions of secs. 23, 26, 27 and 28 lying west and north of St. Hwy 286, secs. 29 to 31, those portions of secs. 32 and 33 lying west and north of St. Hwy 286; T. 19 S., R. 7 E., those portions of secs. 1, 12, 13, 14, and 23 lying east of Papago Indian Reservation Bdy, secs. 24 and 25, those portions of secs. 26, 27, and 34 lying east of Papago Indian Reservation Bdy, secs. 35, 36; T. 19 S., R. 8 E., secs. 1 to 12, N½ sec. 13, secs. 14 to 21, W½ sec. 22, S½ sec. 26, S½ NW¼ sec. 27, secs. 28 to 36; T. 19 S., R. 9 E., sec. 6; T. 20 S., R. 7 E., secs. 1, 2, those portions of secs. 3, 9, and 10 lying east of Papago Indian Reservation Bdy, secs. 11 to 15, those portions of secs. 16, 17, and 21 lying east of Papago Indian Reservation Bdy, secs. 22 to 27, those portions of secs. 28, 29, 32, and 33 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 20 S., R. 8 E., secs. 2 to 11, 14 to 23, 27 to 33; T. 21 S., R. 7 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of Papago Indian Reservation Bdy, secs. 9 to 16, those portions of secs. 17 and 20 lying east of Papago Indian Reservation Bdy, secs. 21 to 27, those portions of secs. 28 and 29 lying east of Papago Indian Reservation Bdy, secs. 34 to 36; T. 21 S., R. 8 E., secs. 4 to 9; T. 22 S., R. 7 E., secs. 1 to 3, 10 to 15, 22, 23, 24; T. 22 S., R. 8 E., S½ SW, SW¼ SE¼ sec. 18, W ½ & W ½ E ½ sec. 19, that portion of sec. 20 outside Buenos Aires NWR Bdy, secs. 29, 30.

Map Unit 2: Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 13

S., R. 9 E., secs. 31 to 36; T. 13 S., R. 10 E., secs. 31 to 36; T. 13 S., R. 12 E., those portions of secs. 31 to 34 lying within Tucson Mountain County Park; T. 14 S., R. 9 E., secs. 1 to 12; T. 14 S., R. 10 E., secs. 1 to 12; T. 14 S., R. 11 E., that portion of sec. 1 lying within the Tucson Mountain County Park, secs. 5 to 8, 10, 11, those portions of secs. 12 and 13 lying within Tucson Mountain County Park, sec. 14 and 15; T. 14 S., R. 12 E., those portions of secs. 1 to 25 lying within Tucson Mountain County Park; T. 14 S. R. 13 E., those portions of secs. 7, 18, 19, 28, 29, and 30 lying within Tucson Mountain County Park.

Map Unit 3: Pima County, Arizona. From BLM map Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 12 S., R. 12 E., those portions of secs. 8 and 9 lying south and west of Interstate 10, secs. 17, 20, and 29.

Map Unit 4: Pima and Pinal Counties, Arizona. From BLM maps Casa Grande, Ariz. 1979, Silver Bell Mts., Ariz. 1977. Gila and Salt Principal Meridian, Arizona: T. 10 S., R. 11 E., secs. 1 to 36; T. 10 S., R. 12 E., secs. 4 to 9, 16 to 21, 28 to 33; T. 11 S., R. 11 E., secs. 1 to 5, 9 to 15, secs. 23, 24; T. 11 S., R. 12 E., secs. 3 to 10, 14 to 30, N½ sec. 31, secs. 32 to 36; T. 11 S., R. 13 E., secs. 19, 28 to 33; T. 12 S., R. 12 E., secs. 1 to 4, those portions of secs. 8 and 9 lying north and east of Interstate 10, secs. 10 to 14, 23, 24, that portion of sec. 25 lying north of W. Cortaro Farms Road, that portion of sec. 26 lying north of W. Cortaro Farms Road and north and east of Interstate 10; T. 12 S., R. 13 E., secs. 4 to 9, 16 to 21, those portions of secs. 29 and 30 lying north of W. Cortaro Farms Road.

Map Unit 5a: Pinal County, Arizona. From BLM maps Mesa, Ariz. 1979, Casa Grande, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 5 S., R. 11 E., secs. 1 to 36; T. 6 S., R. 11 E., secs. 1 to 36; T. 7 S., R. 11 E., secs. 1 to 36; T. 8 S., R. 11 E., secs. 1 to 36; T. 9 S., R. 11 E., secs. 1 to 36.

Map Unit 5b: Pinal County, Arizona. From BLM maps Casa Grande, Ariz. 1979, Mammoth, Ariz. 1986. Gila and Salt Principal Meridian, Arizona: T. 8 S., R. 15 E., secs. 1 to 36; T. 9 S., R. 12 E., secs. 1 to 36;

T. 9 S., R. 13 E., secs. 1 to 36; T. 9 S., R. 14 E., secs. 1 to 36; T. 9 S., R. 15 E., secs. 1 to 12, 14 to 21, 28 to 30.

Map Unit 6: Cochise, Pima, and Pinal Counties, Arizona. From BLM maps Mesa, Ariz. 1979, Globe, Ariz. 1986, Mammoth, Ariz. 1986, and Tucson, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 4 S., R. 9 E., those portions of secs. 1, 12, 13, and 24 lying east of U.S. Hwy 89; T. 4 S., R. 10 E., secs. 1 to 5, that portion of sec. 6 lying east of U.S. Hwy 89, secs. 7 to 24; T. 4 S., R. 11 E., secs. 7 to 36; T. 4 S., R. 12 E., secs. 1 to 12; T. 4 S., R. 13 E., that portion of sec. 1 lying south and west of St. Hwy 177, secs. 2 to 12; T. 4 S., R. 14 E., those portions of secs. 6, 7, 8, 16, and 17 lying south and west of St. Hwy 177, secs. 18, 20, those portions of secs. 21, 22, 26, and 27, lying south and west of St. Hwy 177, secs. 28, 29, 33, and 34, that portion of sec. 35 lying south and west of St. Hwy 177, sec. 36; T. 5 S., R. 14 E., those portions of secs. 1 and 2 lying south and west of St. Hwy 177, secs. 3, 11, 12; T. 5 S., R. 15 E., those portions of secs. 6, 7, 8, 9, and 10 lying south and west of St. Hwy 177, that portion of sec. 14 lying south and west of the Pinal and Gila counties boundary (all within Pinal County), that portion of sec. 15 lying south of St. Hwy 177 and west of the Pinal and Gila counties boundary (all within Pinal County), secs 16 to 22, that portion of sec. 23 lying south and west of the Pinal and Gila counties boundary (all within Pinal County), that portion sec. 24 lying west of St. Hwy 77 and south of Pinal and Gila counties boundary (all within Pinal County), that portion of sec. 25 lying south and west of St. Hwy 77, secs. 26 and 36; T. 5 S., R. 16 E., those portions of secs. 30 and 31 lying south and west of St. Hwy 77; T. 6 S., R. 15 E., sec. 1; T. 6 S., R. 16 E., those portions of secs. 5 and 6 lying south and west of St. Hwy 77, sec. 7, those portions of secs. 8, 9, and 17 lying south and west of St. Hwy 77, secs. 17 and 20, those portions of secs. 21 and 28 lying west of St. Hwy 77, secs. 29 and 32, that portion of sec. 33 lying west of St. Hwy 77; T. 7 S., R. 16 E., that portion of sec. 4 lying west of St. Hwy 77, secs. 5 to 8, those

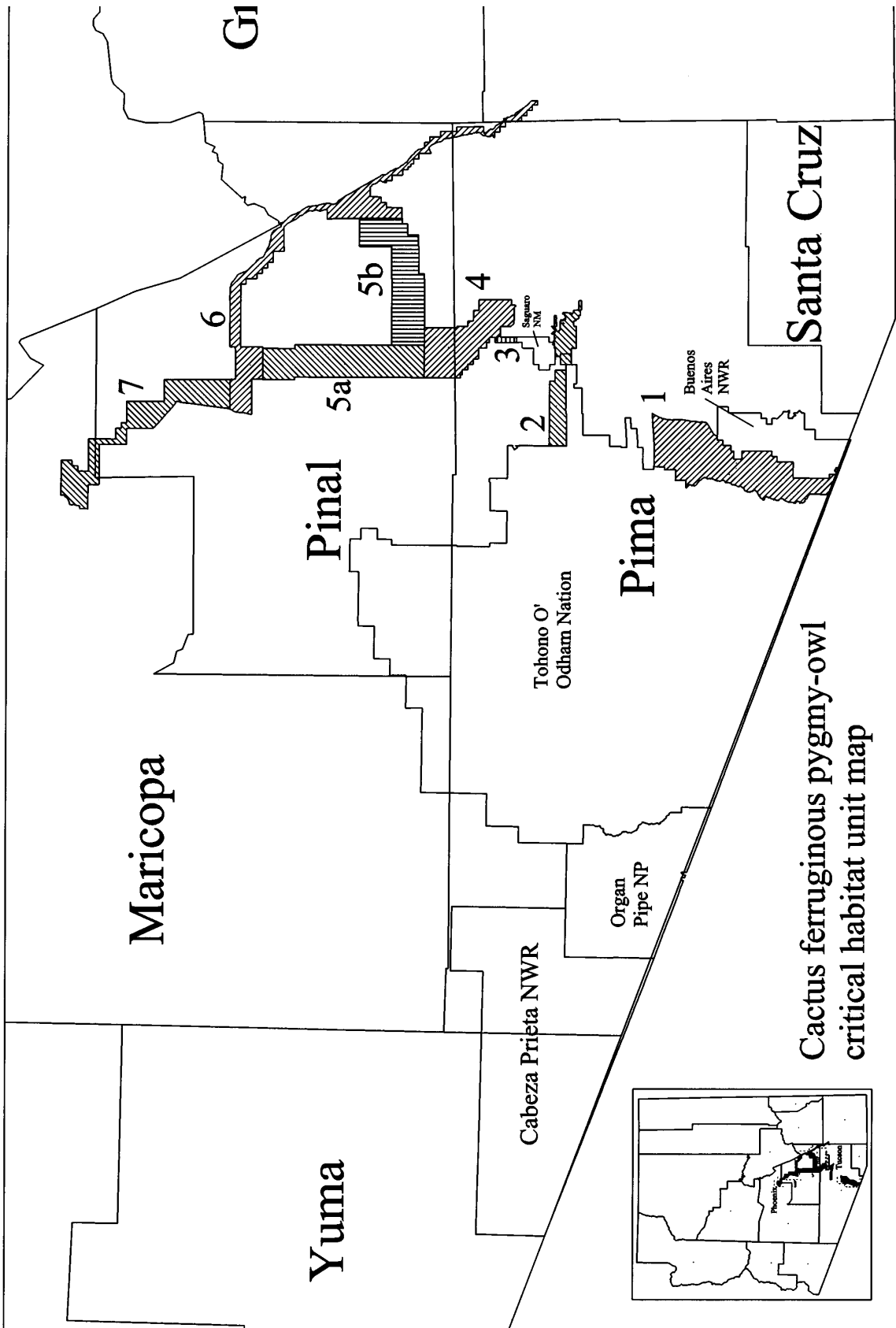
portions of secs. 9, 10, and 15 lying south and west of St. Hwy 77, secs. 16 to 21, those portions of secs. 22, 23, 25, and 26 lying south and west of St. Hwy 77, secs. 27 to 35, that portion of sec. 36 lying south and west of St. Hwy 77; T. 8 S., R. 16 E., that portion of sec. 1 lying south and west of St. Hwy 77, secs. 2 to 12, 15 to 22, 28 to 32; T. 8 S., R. 17 E., that portion of sec. 6 south and west of St. Hwy 77, that portion of section 7 west of St. Hwy 77 and west of River Road, that portion of sec. 17 lying south and west of River Road, that portion of sec. 18 south and west of River Road and north and east of a line defined by Camino Rio Road where it runs southeasterly from the west boundary of sec. 18 to its intersection with St. Hwy 77 then southeasterly along St. Hwy 77 to its intersection with Old State Hwy 77 then along Old State Hwy 77 to its intersection with the south boundary of sec. 18, that portion of sec. 19 lying east of Old State Highway 77, those portions of secs. 20, 28, and 29 lying south and west of River Road, that portion of sec. 30 lying east of Old State Hwy 77 and St. Hwy 77, sec. 32, that portion of sec. 33 lying west of River Road; T. 9 S., R. 16 E., secs. 5 to 8; T. 9 S., R. 17 E., those portions of secs. 3 and 4 lying west of River Road, sec. 9, those portions of secs. 10, 14, and 15 lying west of River Road, NE 1/4 sec. 22, those portions of secs. 23, 24, and 25 west of River Road; T. 9 S., R. 18 E., those portions of secs. 30 and 31 west of River Road; T. 10 S., R. 18 E., those portions of secs. 5, 6, 7, and 8 lying north and east of Redington Road, sec. 9, those portions of secs. 16, 17, and 21 lying north and east of Redington Road, secs. 22 and 27, those portions of secs. 28 and 33 lying east of Redington Road, sec. 34; T. 11 S., R. 18 E., sec. 2, those portions of secs. 3 and 10 lying east of Redington Road, secs. 11 and 14, those portions of secs. 14 and 22 lying east of Redington Road, secs. 23 and 26, that portion of sec. 27 lying east of Redington Road, that portion of sec. 34 lying east of Redington Road and west of Cascabel Road, that portion of sec. 35 lying west of Cascabel Road; T. 12 S., R. 18 E., that portion of sec. 2 west of Cascabel Road, that

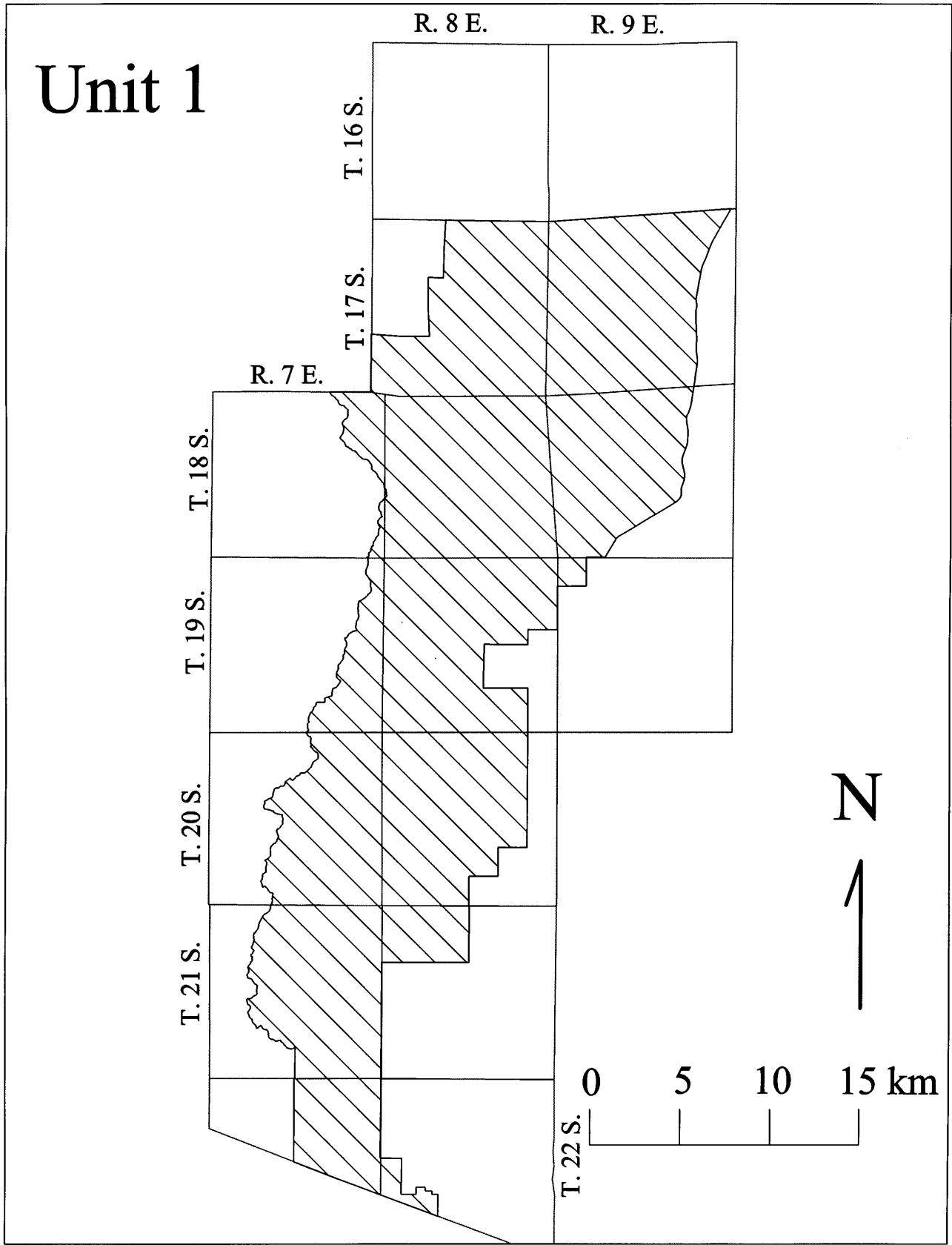
portion of sec. 3 lying east of Redington Road, those portions of secs. 11, 12, and 13 lying west of Cascabel Road; T. 12 S., R. 19 E., those portions of secs. 19, 29, and 30 lying west of Cascabel Road, sec. 31, that portion of sec. 32 lying west of Cascabel Road; T. 13 S., R. 19 E., that portion of sec. 4 lying west of Cascabel Road, sec. 5, those portions of secs. 9, 10, and 15 lying west of Cascabel Road.

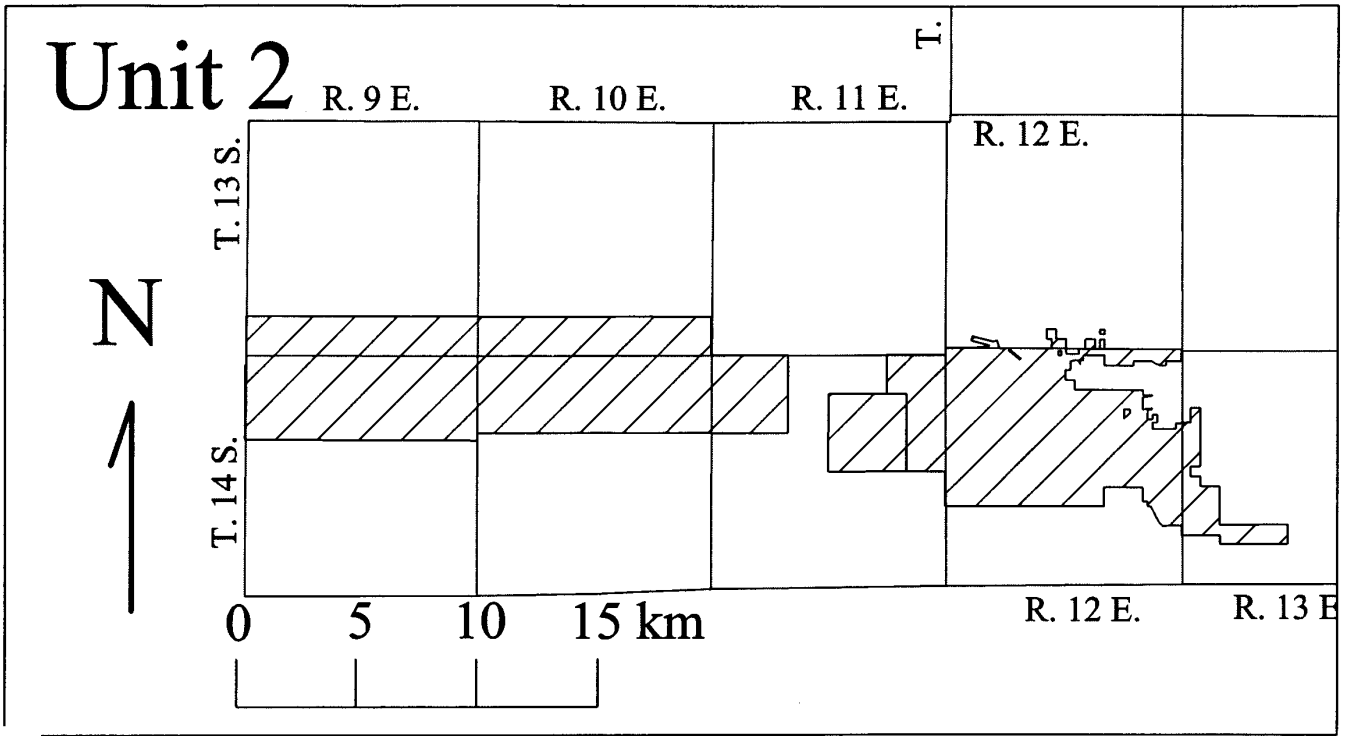
Map Unit 7: Maricopa and Pinal Counties, Arizona. From BLM maps Theodore Roosevelt Lake, Ariz. 1981 and Mesa, Ariz. 1979. Gila and Salt Principal Meridian, Arizona: T. 3 N., R. 7 E., that portion of sec. 33 lying easterly of Salt River Indian Reservation Bdy, secs. 34 to 36; T. 3 N., R. 8 E., secs. 31 to 33; T. 2 N., R. 7 E., secs. 1 to 3, those portions of secs. 4, 5, 6 and 7 lying south and east of Salt River Indian Reservation Bdy, secs. 8 to 17, that portion of sec. 18 lying south and east Salt River Indian Reservation Bdy, secs. 19 to 25, E 1/2 sec. 26, E 1/2 sec. 35, sec. 37; T. 2 N., R. 8 E., secs. 4 to 8, 18, 19, 25 to 36; T. 2 N., R. 9 E., secs. 30, 31; T. 1 N., R. 9 E., secs. 6, 7, 18 to 31, 27 to 30, 34 to 36; T. 1 N., R. 10 E., secs. 31, 32; T. 1 S., R. 9 E., secs. 1 to 3, 10 to 15, 22 to 26, those portions of secs. 27, 35 and 36 lying north and east of U.S. Hwy 60/89; T. 1 S., R. 10 E., secs. 5 to 8, 17 to 20, 29 to 32; T. 2 S., R. 9 E., that portion of sec 1 lying north and east of U.S. Hwy 60/89; T. 2 S., R. 10 E., secs. 1 to 5, those portions of secs. 6, 7 and 8 lying north and east of U.S. Hwy 60/89, secs. 9 to 16, that portion of sec. 17 lying north and east of U.S. Hwy 60/89 and south and east of U.S. Hwy 89, that portion of sec. 20 lying east of U.S. Hwy 89, secs. 21 to 28, those portions of secs. 29 and 32 lying east of U.S. Hwy 89, secs. 33 to 36; T. 3 S., R. 10 E., secs. 1 to 4, those portions of secs. 5 and 8 lying east of U.S. Hwy 89, secs. 9 to 16, those portions of secs. 17, 18, and 19 lying east of U.S. Hwy 89, secs. 20 to 29, those portions of secs. 30 and 31 lying east of U.S. Hwy 89, secs. 32 to 36.

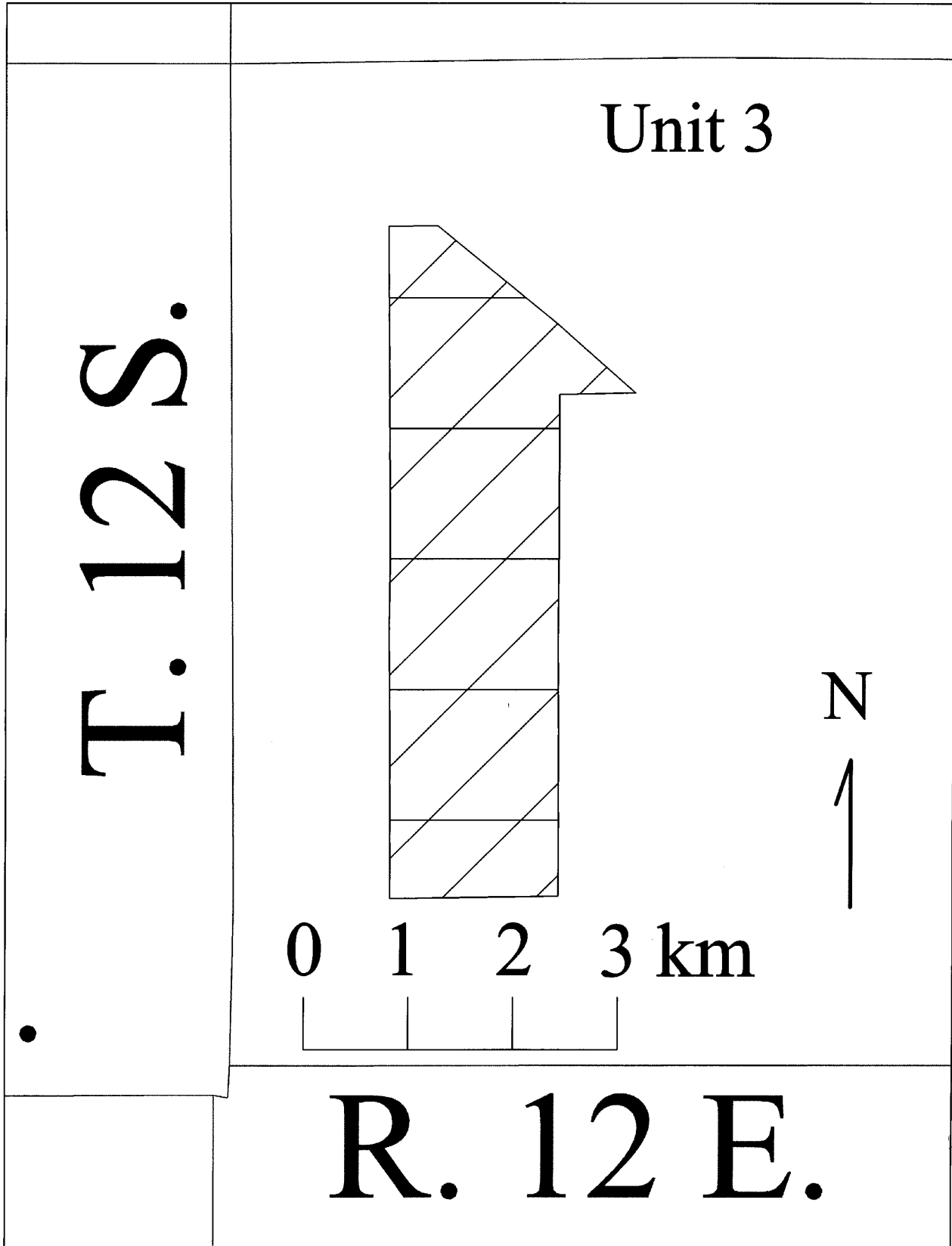
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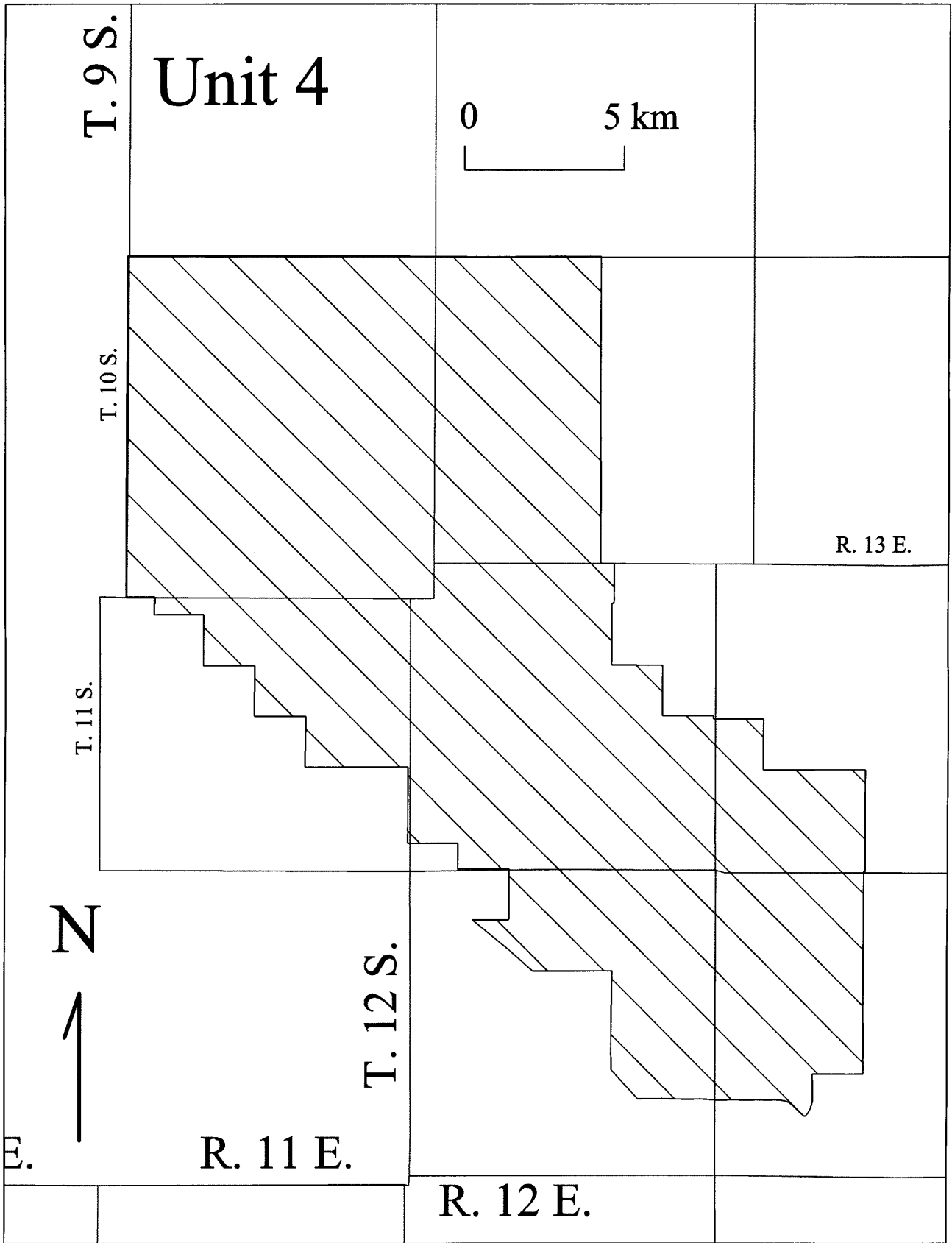
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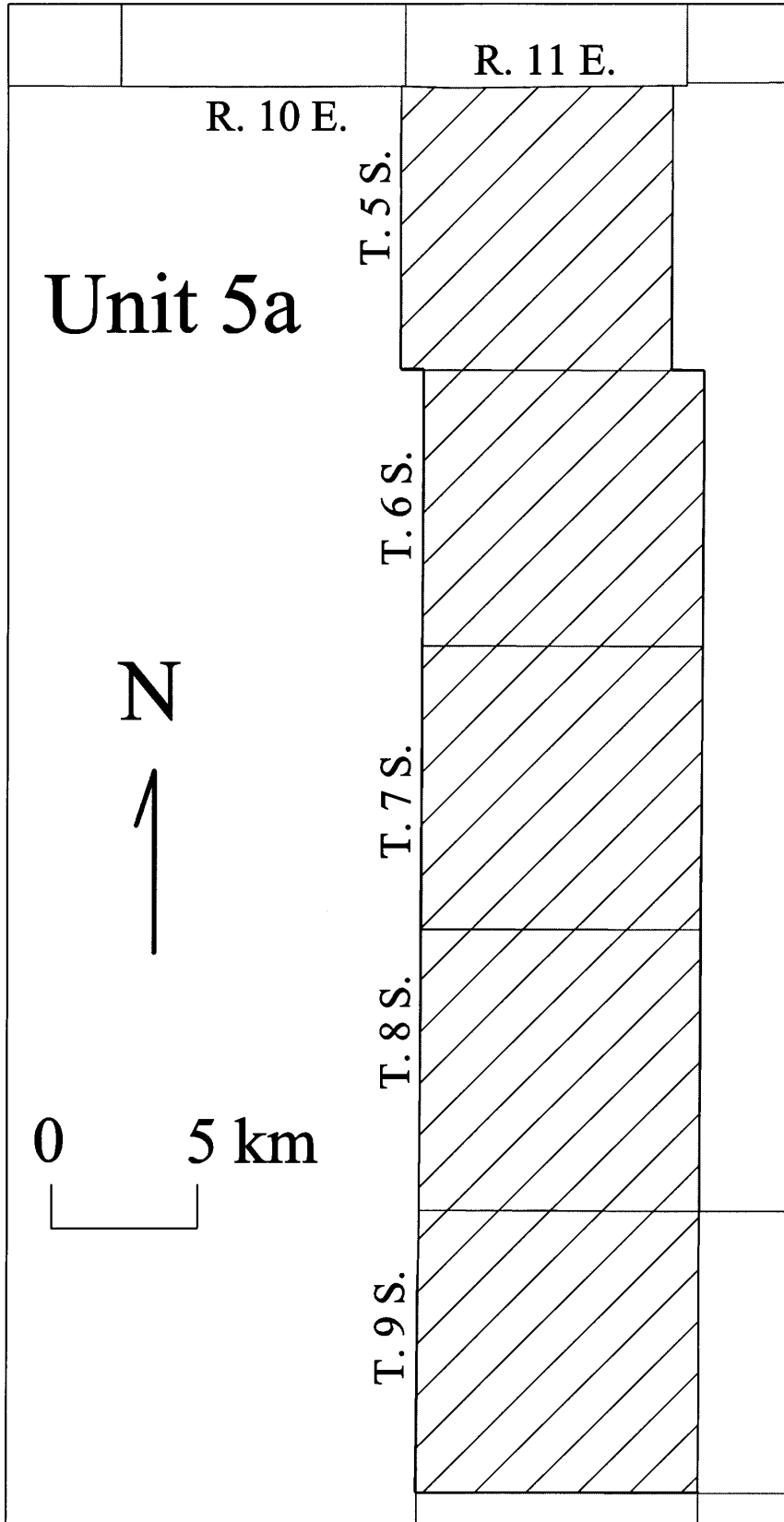


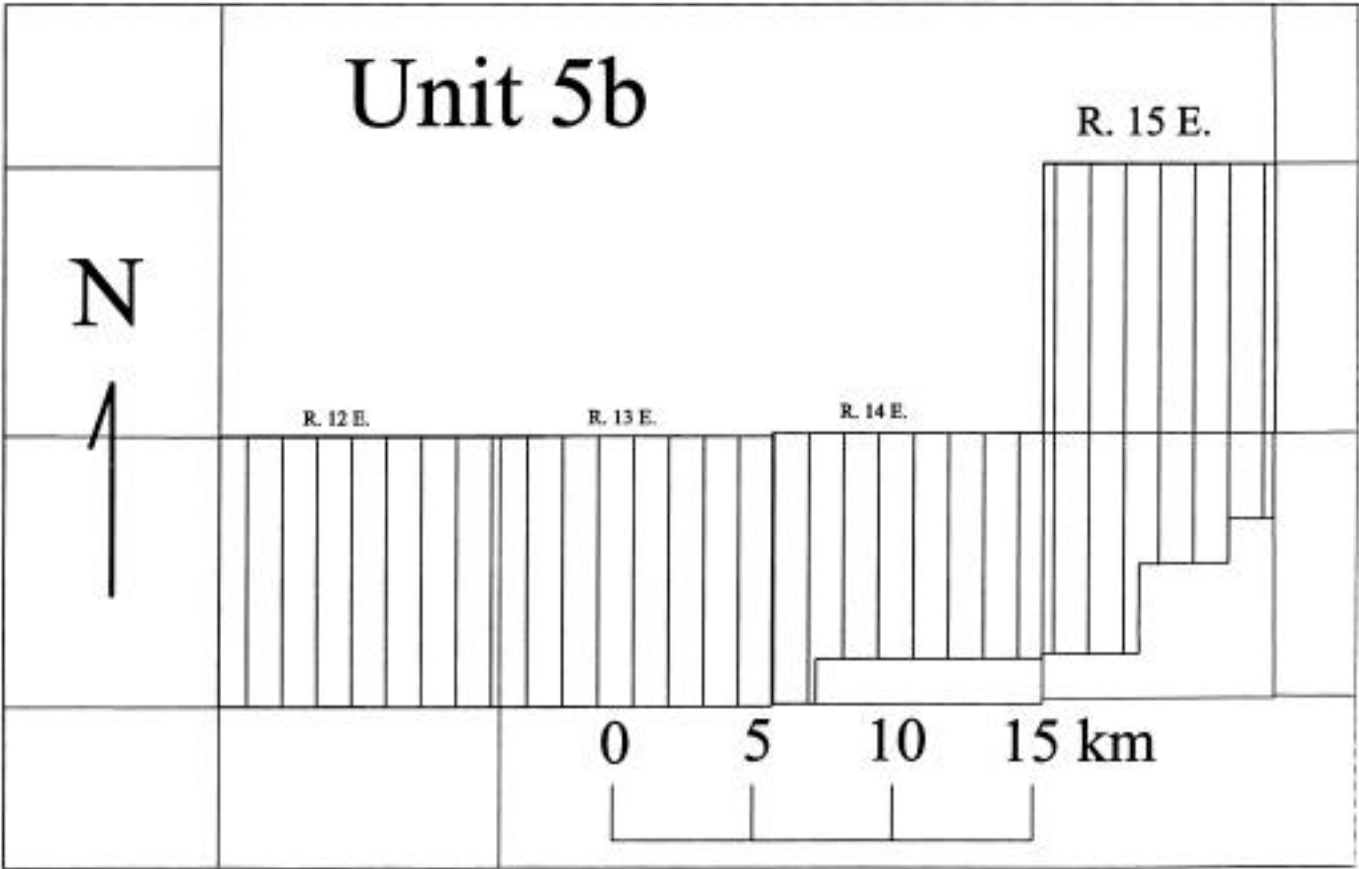


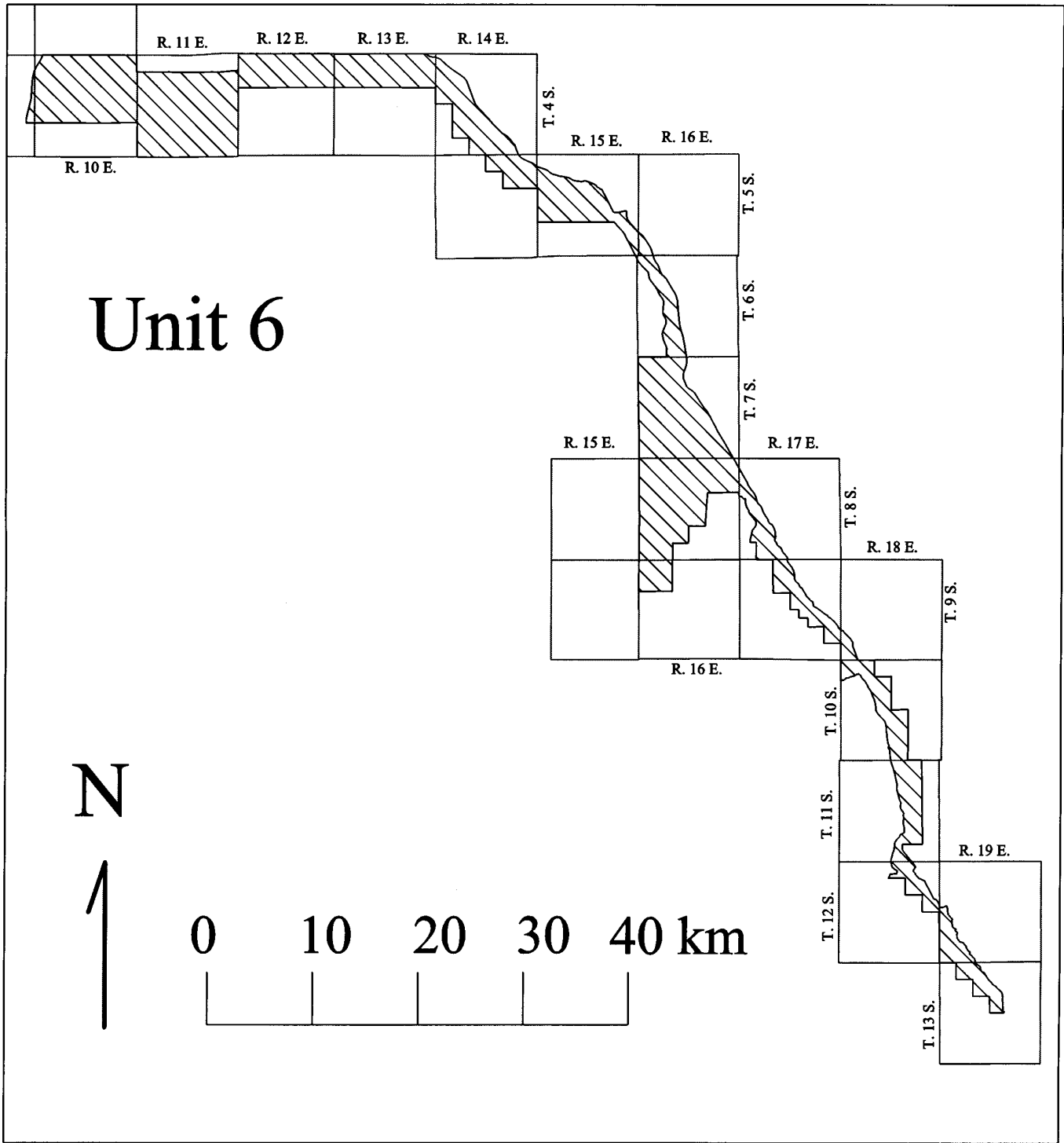


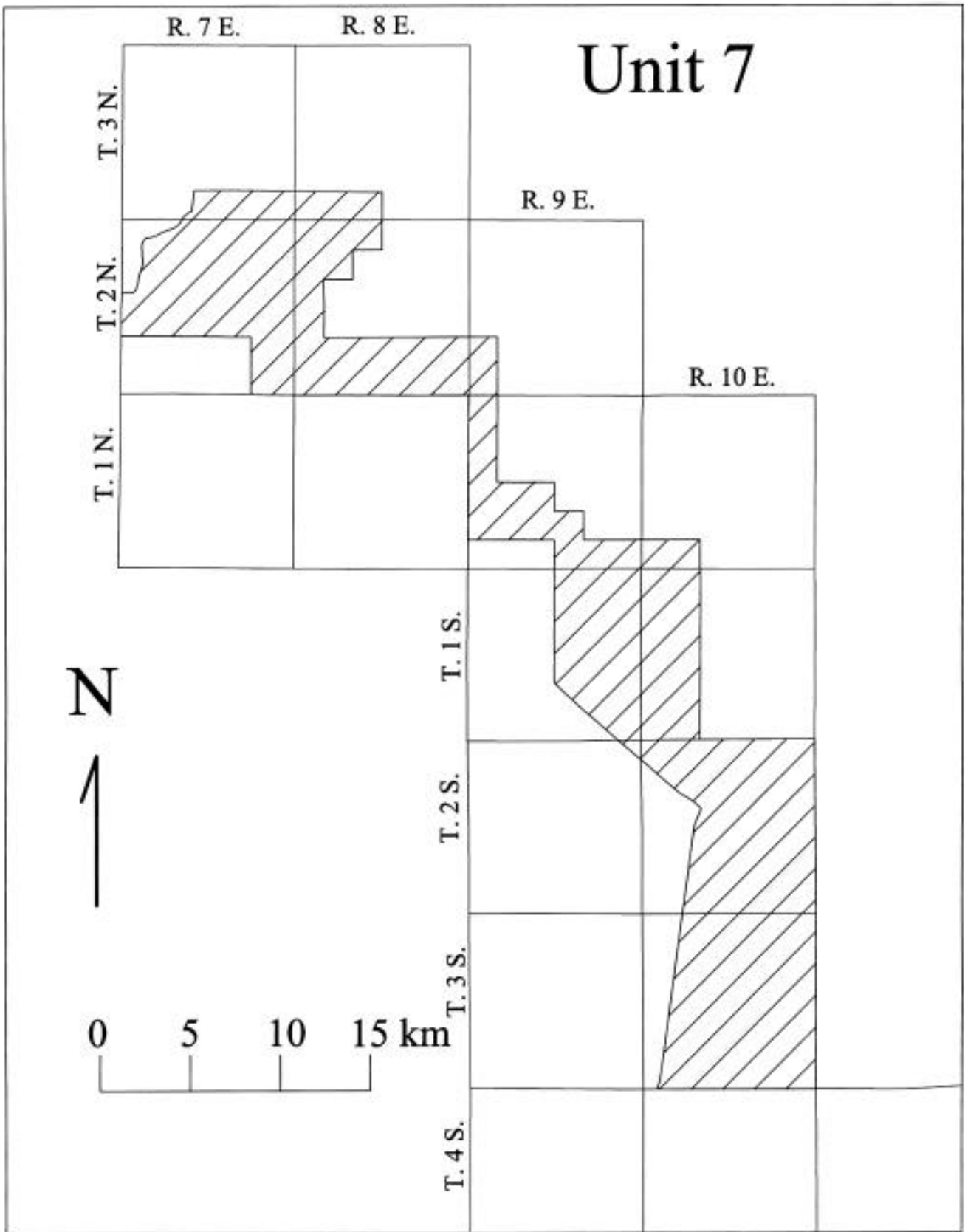












* * * * *
Dated: December 22, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98-34412 Filed 12-23-98; 3:59 pm]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF37

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Lilaeopsis schaffneriana* ssp. *recurva*, the Huachuca water umbel, a plant. Proposed critical habitat includes a total of 83.9 kilometers (52.1 miles) of

streams or rivers in Cochise and Santa Cruz counties, Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until March 1, 1999. We will hold a public hearing on this proposed rule; we will publish the date and location of this hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

ADDRESSES: Send comments and materials to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021-4951. Comments and materials received will be available for public inspection, by

appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640-2720 ext. 240; facsimile 602/640-2730).

SUPPLEMENTARY INFORMATION:

Background

Lilaeopsis schaffneriana ssp. *recurva* (referred to as *Lilaeopsis* in this proposed rule), the Huachuca water umbel, is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as *Lilaeopsis* (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982).