

ESA Guidance for Rusty Patched Bumble Bee Proposed Critical Habitat

On November 26, 2024, USFWS proposed to **designate critical habitat** for the federally endangered **rusty patched bumble bee** under the federal **Endangered Species Act**.

This is not a final rule. USFWS may make changes to proposed critical habitat based on public comments/new information. The final decision and accompanying critical habitat designation rule would be expected to be published about 1 year from the proposed rule date, with an effective date to follow.

Important notes on critical habitat

- Critical habitat units are legally designated geographic areas that contain suitable habitat for RPBB and specific physical and biological features (PBFs) essential to the conservation of the species.
- Designation of critical habitat is in addition to the listed species and its respective range, which is represented by high potential zones (HPZs). This proposed critical habitat designation does not change/remove HPZs.
- Critical habitat receives protection under Section 7 of the Endangered Species Act. Federal agency actions or federally funded or permitted activities that *may affect* an area designated as critical habitat require consultation with USFWS once the designation is final. Section 7 conferencing may be necessary for some projects before the designation is final to avoid project delays later on.
- Critical habitat requires its own effects analysis and determination based on the PBFs (see below).
- The proposed RPBB critical habitat units overlap developed areas, such as lands covered by buildings, pavement, and other structures. These structures are not designated as critical habitat themselves because such structures lack the PBFs necessary for RPBB.

RPBB critical habitat physical and biological features (PBFs)

1. For overwintering, upland forest interior habitat containing leaf litter and without dense understory vegetation.
2. For nesting, upland forest edge interface between forested and non-forested natural habitats that extends approximately 30 meters into the forest.
3. For nesting, abandoned rodent burrows, other mammal burrows, existing cavities with ample cover, or similar existing cavities at the soil surface or below to 4 feet underground.
4. For nesting and overwintering, well-drained, loose soils sheltered from the elements.
5. For foraging, diverse, abundant, native floral resources for the entire active flight season.

Proposed units that overlap Wisconsin (see attached maps)

All of the proposed RPBB critical habitat is considered occupied by the species (i.e. within a HPZ) and each unit contains all of the PBFs listed above.

- **Unit 1: Minneapolis-St Paul** – Small areas extend into St Croix and Pierce counties
- **Unit 5: Denzer** – Sauk County near Denzer

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- **Unit 6: Bunker Hill** – Iowa County near Bunker Hill
- **Unit 7: Madison** – Dane and Iowa counties near Madison
- **Unit 8: Milwaukee** – Milwaukee, Ozaukee, Racine, Washington and Waukesha counties in the Milwaukee metropolitan area
- **Unit 10: McHenry** – Kenosha County near state line

ESA compliance

- Actions that do not have a federal nexus (i.e. funding, permit, authorization), for example, WisDOT-only funded projects/maintenance actions, will not have any new requirements as they are not actions subject to Section 7. Ensure any RPBB species HPZ overlap is addressed as previously expected.
- Similar to other critical habitats/species proposed for ESA designation/listing (e.g., salamander mussel critical habitat, tricolored bat), WisDOT/FHWA are not able to engage USFWS in Section 7 consultation until the final rule is effective. ESA compliance will be required after the final rule effective date. This will prompt the need for a re-evaluation if the environmental document has already been approved.
 - **Important:** Consultation and re-evaluations are time consuming and can delay construction. Projects expected to be in or are approaching construction as early as fall 2025 can be at risk to jeopardize construction if no action is taken in advance of the effective date.
- **Section 7 conferencing**, which is conducted prior to the effective date of a final rule, may be appropriate/necessary for a project based on the anticipated effect determination, consultation timeline, and project schedule.
 - **Section 7 (formal) conferencing** with USFWS is strongly encouraged for projects that “may affect and are likely to adversely affect” the proposed critical habitat, as formal consultation (once effective) is a lengthy process and cannot be expedited. Conferencing can minimize delay for these projects. Please reach out to Jen Gibson, WisDOT ecologist, if you think you have a project in this situation.
 - **Section 7 (informal) conferencing** with USFWS may be recommended for projects that “may affect but are not likely to adversely affect” the critical habitat if timing of the final rule and subsequent required informal consultation (once effective) will cause delays to project letting/construction. Informal consultation can take 60 days or more once listed and has the potential to cause delays to construction. Conferencing can minimize delay for these projects.

Process for federally funded projects

- Review existing federalized projects against the proposed critical habitat units.
 - This data layer will be added to the internal *Rusty Patched Bumble Bee Data and Mapping* WisDOT geoportal map when available.
- If the project’s action area does not overlap a proposed critical habitat unit, no further action for the critical habitat is necessary. Ensure any RPBB species HPZ overlap is addressed as previously expected.

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- If the project's action area overlaps with a proposed critical habitat unit, the project will either:
 - take action through Section 7 conferencing; or
 - take no action on the RPBB critical habitat until the designation has been finalized through the rulemaking process.
 - **Important:** see notes in "ESA compliance" section above for further guidance on both options and potential project delays if no action is taken.
- If Section 7 conferencing will not be conducted, NEPA documents in preparation/re-evaluation can use the following text. Please note that ESA compliance will be required after the effective date of the critical habitat designation and that will prompt the need for a re-evaluation (see ESA compliance section).

On November 26, 2024, the U.S. Fish and Wildlife Service (USFWS) announced a proposal to designate critical habitat for the federally endangered rusty patched bumble bee (*Bombus affinis*). If designated, WisDOT will resolve ESA compliance prior to let, as appropriate. Construction activities for this project will not take place until WisDOT, in coordination with our lead federal agency, satisfies Endangered Species Act compliance for the rusty patched bumble bee critical habitat (see ESA compliance section).

- If the NEPA document has already been signed and Section 7 conferencing will not be conducted, there is no need to reevaluate the document at this time solely due to this proposed designation. Please note that ESA compliance will be required after the effective date of the critical habitat designation and that will prompt the need for a re-evaluation.

Resources

[Federal Register: Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rusty Patched Bumble Bee](#)

[Questions and Answers: Proposed Critical Habitat for the Rusty Patched Bumble Bee](#)

Figure 1 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (5)

Index Map: Rusty Patched Bumble Bee (*Bombus affinis*) Critical Habitat Units



(6) *Unit 1*: Minneapolis-St. Paul Metropolitan; Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, and St. Croix Counties, Minnesota.

(i) Unit 1 consists of 567,805 acres (ac) (229,782 hectares (ha)) in the Minneapolis-St. Paul metropolitan area of Minnesota in Ramsey, Scott, Dakota, Pierce, Washington, Carver, Hennepin, and St. Croix Counties. Unit 1 is composed of primarily private lands (499,204 ac (202,021 ha)), local

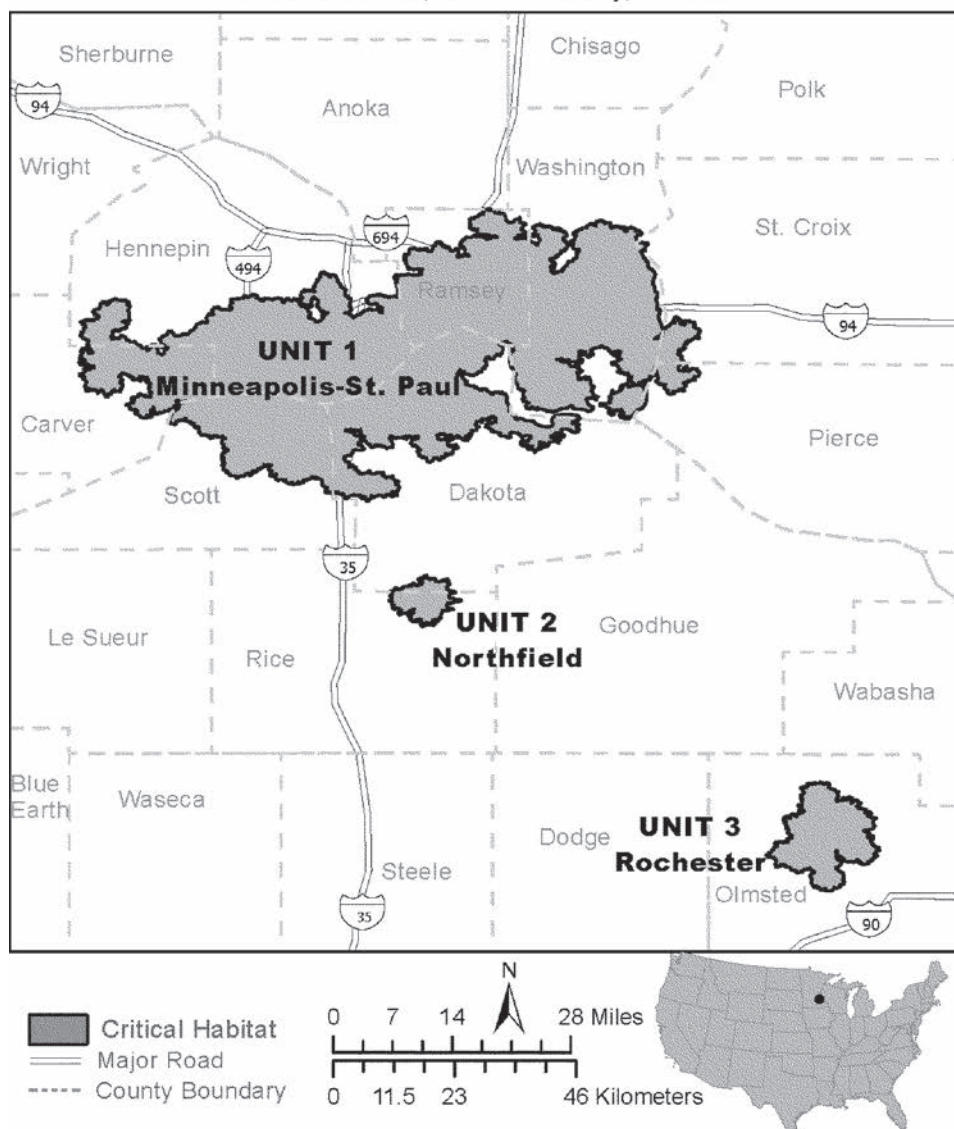
government-owned lands (40,596 ac (16,429 ha)), university or school lands (7,190 ac (2,910 ha)), Minnesota State lands (11,983 ac (4,849 ha)), and Tribal lands (3,091 ac (1,251 ha)). Federal lands (5,741 ac (2,323 ha)) in Unit 1 include National Park Service's Mississippi National River and Recreational Area and Lower St. Croix National Scenic Riverway, and the Service's Minnesota Valley National Wildlife Refuge. Approximately 212 ac

(86 ha) of privately owned lands are managed by the U.S. Department of Agriculture's Natural Resources Conservation Service (USDA-NRCS) Wetlands Reserve Program. Tribal lands include Shakopee Mdewakanton Sioux Community and Shakopee Mdewakanton Sioux Community Off-Reservation Land Trust.

(ii) Map of Units 1, 2, and 3 follows:

Figure 2 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (6)(ii)

Critical Habitat for Rusty Patched Bumble Bee
Unit 1: Minneapolis-St. Paul; Ramsey, Scott, Dakota, Pierce, Washington, Carver,
Hennepin, St. Croix Counties, Minnesota
Unit 2: Northfield; Dakota and Rice Counties, Minnesota
Unit 3: Rochester; Olmsted County, Minnesota



(7) *Unit 2*: Northfield; Dakota and Rice Counties, Minnesota.

(i) Unit 2 consists of 12,557 ac (5,082 ha) in Dakota and Rice Counties. This unit includes private lands (12,056 ac (4,879 ha)), local government-owned lands (489 ac (198 ha)), and Minnesota State lands (12 ac (5 ha)).

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

(8) *Unit 3*: Rochester; Olmsted County, Minnesota.

(i) Unit 3 consists of 43,091 ac (17,438 ha) in Olmsted County. This unit includes private lands (41,819 ac (16,924 ha)), local government-owned lands (939 ac (380 ha)), and Minnesota State lands (332 ac (134 ha)).

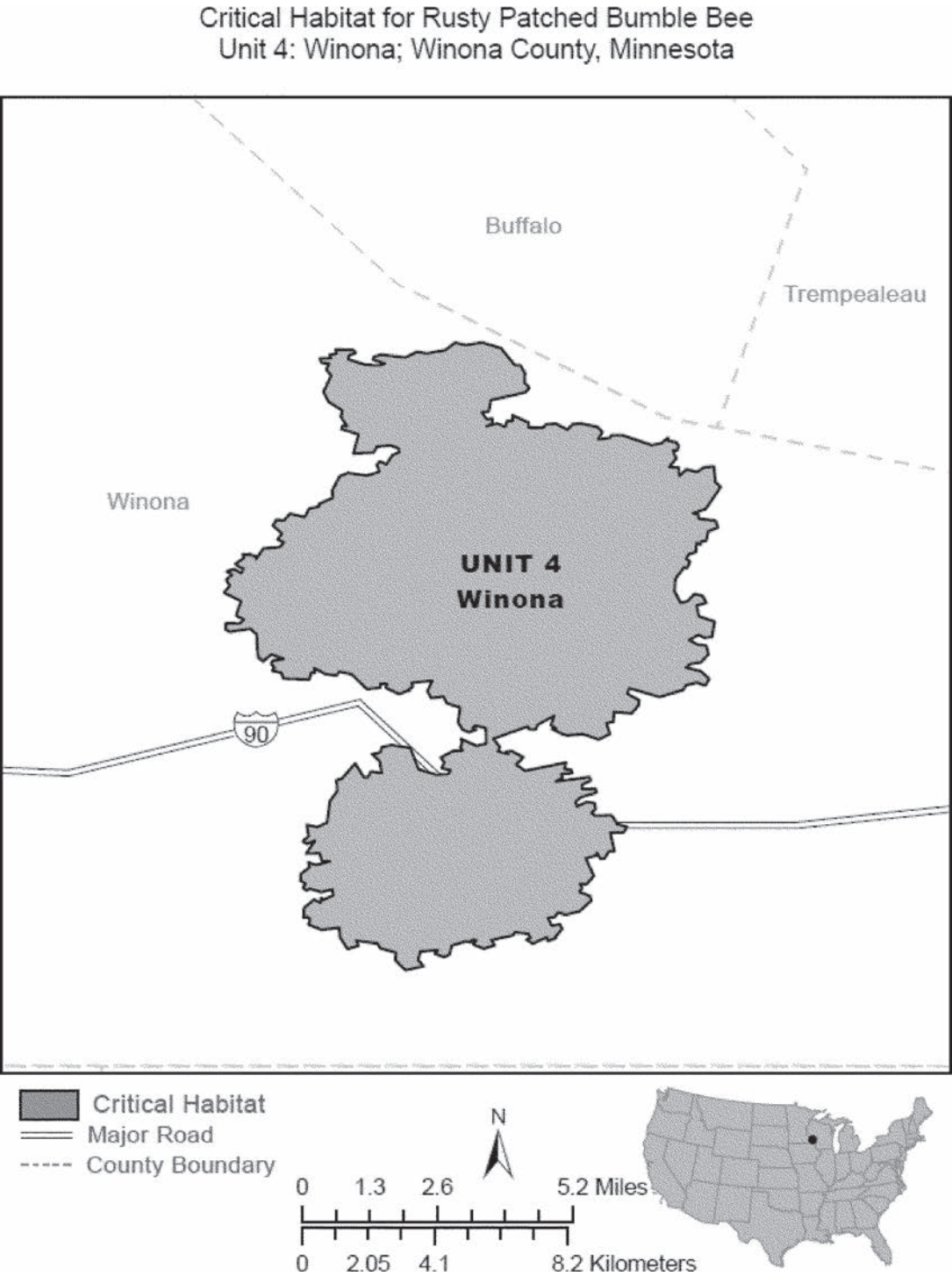
(ii) Map of Unit 3 is provided at paragraph (6)(ii) of this entry.

(9) *Unit 4*: Winona; Winona County, Wisconsin.

(i) Unit 4 consists of 29,823 ac (12,069 ha) in Winona County. This unit includes private lands (29,340 ac (11,873 ha)), local government-owned lands (423 ac (171 ha)), and Minnesota State lands (60 ac (24 ha)).

(ii) Map of Unit 4 follows:

Figure 3 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (9)(ii)



(10) *Unit 5*: Denzer; Sauk County, Wisconsin.

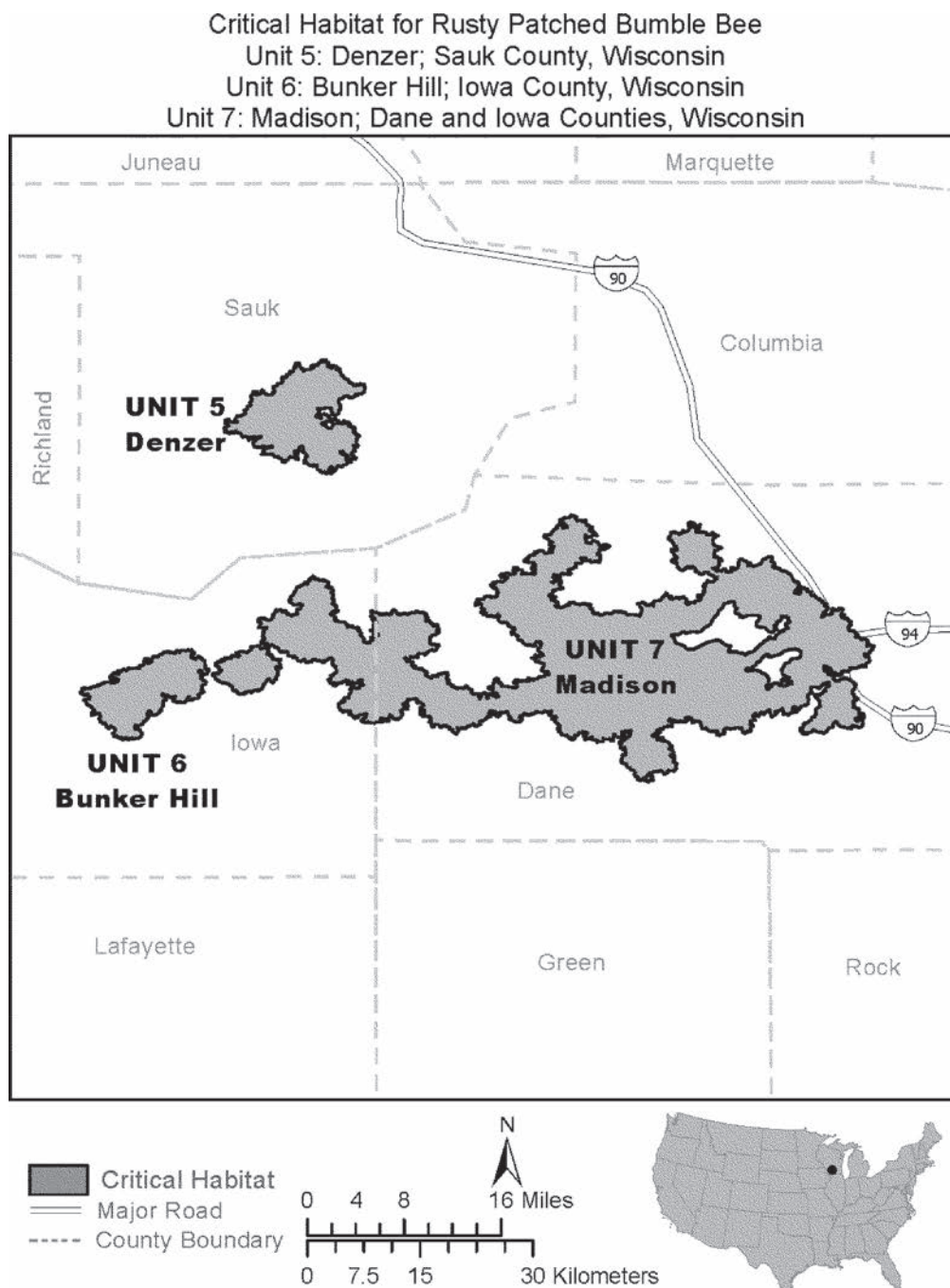
(i) Unit 5 consists of 27,009 ac (10,930 ha) in Sauk County. This unit is

composed of private lands (26,471 ac (10,712 ha)), including 2,345 ac (949 ha) owned by nongovernmental

organizations, and Wisconsin State lands (538 ac (218 ha)).

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

Figure 4 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (10)(ii)



(11) *Unit 6: Bunker Hill; Iowa County, Wisconsin.*

(i) Unit 6 consists of 18,686 ac (7,562 ha) in Iowa County. This unit includes private lands (13,559 ac (5,487 ha)) and Wisconsin State lands (5,126 ac (2,075 ha)).

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

(12) *Unit 7: Madison; Dane and Iowa Counties, Wisconsin.*

(i) Unit 7 consists of 210,753 ac (85,289 ha) in Dane and Iowa Counties. This unit includes primarily private lands (195,952 ac (79,299 ha)), local government-owned lands (8,679 ac (3,512 ha)), university or school lands (1,086 ac (440 ha)), and Wisconsin State lands (4,518 ac (1,828 ha)). This unit contains 4 ac (2 ha) of Ho-Chunk Nation Tribal lands. Federal lands (515 ac (208 ha)) in Unit 7 include the U.S. Forest Service's Forest Products Experimental

Laboratory, National Park Service's Ice Age National Scenic Trail, and the Dane County Waterfowl Production Area owned by the U.S. Fish and Wildlife Service. In this unit, approximately 304 ac (123 ha) of private lands are managed by the USDA–NRCS Wetlands Reserve Program, and approximately 53 ac (21 ha) of private lands are managed by the USDA–NRCS Emergency Waters Protection Program.

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

(13) *Unit 8*: Milwaukee; Waukesha, Ozaukee, Washington, Milwaukee, and Racine Counties, Wisconsin.

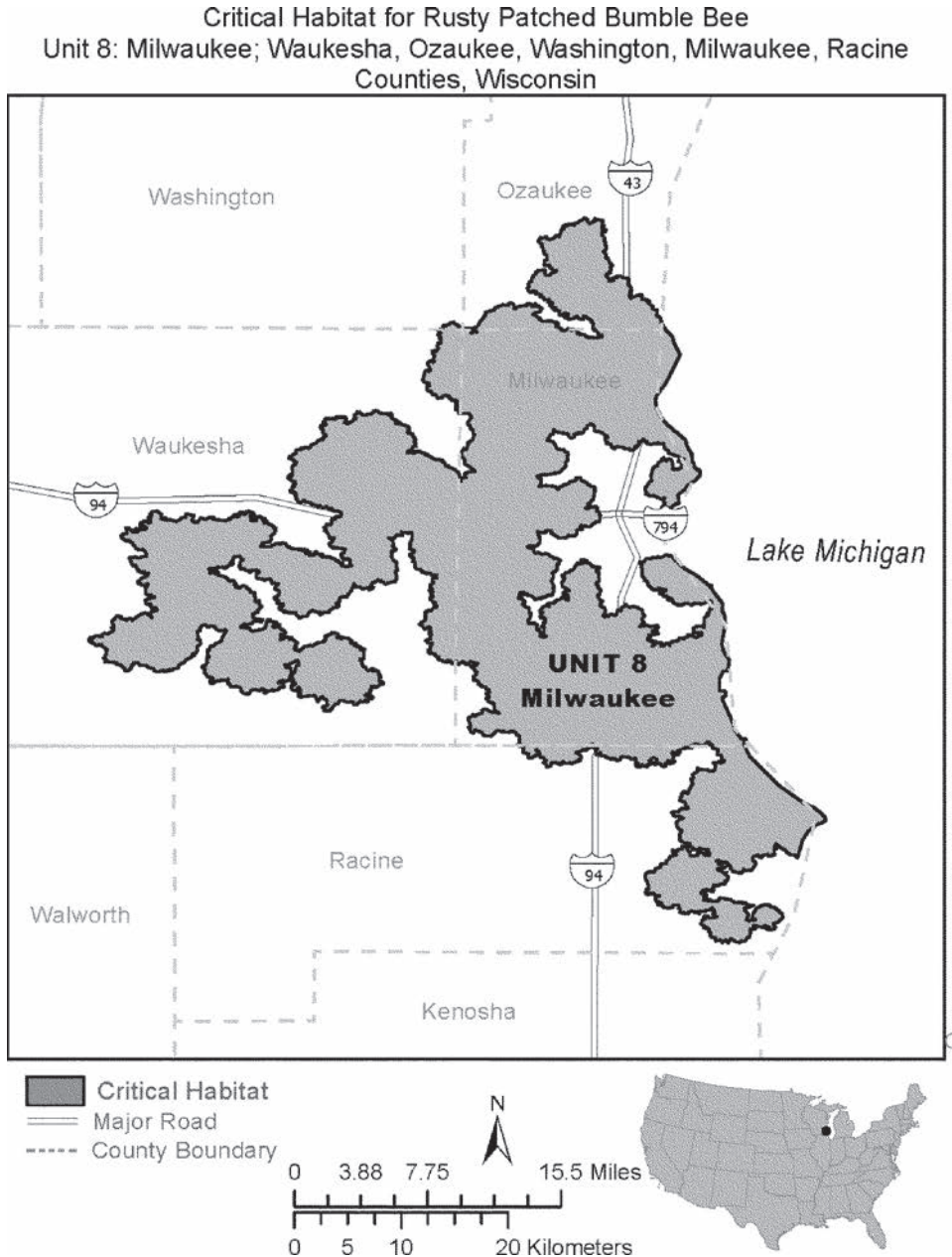
(i) Unit 8 consists of 252,992 acres (102,382 hectares) in Waukesha, Ozaukee, Washington, Milwaukee, and Racine Counties. This unit includes

primarily private lands (232,722 ac (94,179 ha)), local government-owned lands (17,995 ac (7,282 ha)), university or school lands (14 ac (6 ha)), and Wisconsin State lands (2,121 ac (858 ha)). Tribal lands include the Forest County Potawatomi Off-Reservation Land Trust (10 ac (4 ha)). Federally owned lands include 5 ac (2 ha) owned

by the Bureau of Land Management and 126 ac (51 ha)) of Department of Defense-owned lands. Approximately 66 ac (27 ha) of private lands in this unit are managed by USDA–NRCS Wetlands Reserve Program.

(ii) Map of Unit 8 follows:

Figure 5 to Rusty Patched Bumble Bee (*Bombus affinis*) Paragraph (13)(ii)



(14) *Unit 9*: Rockford; Winnebago, Boone, and Ogle Counties, Illinois.

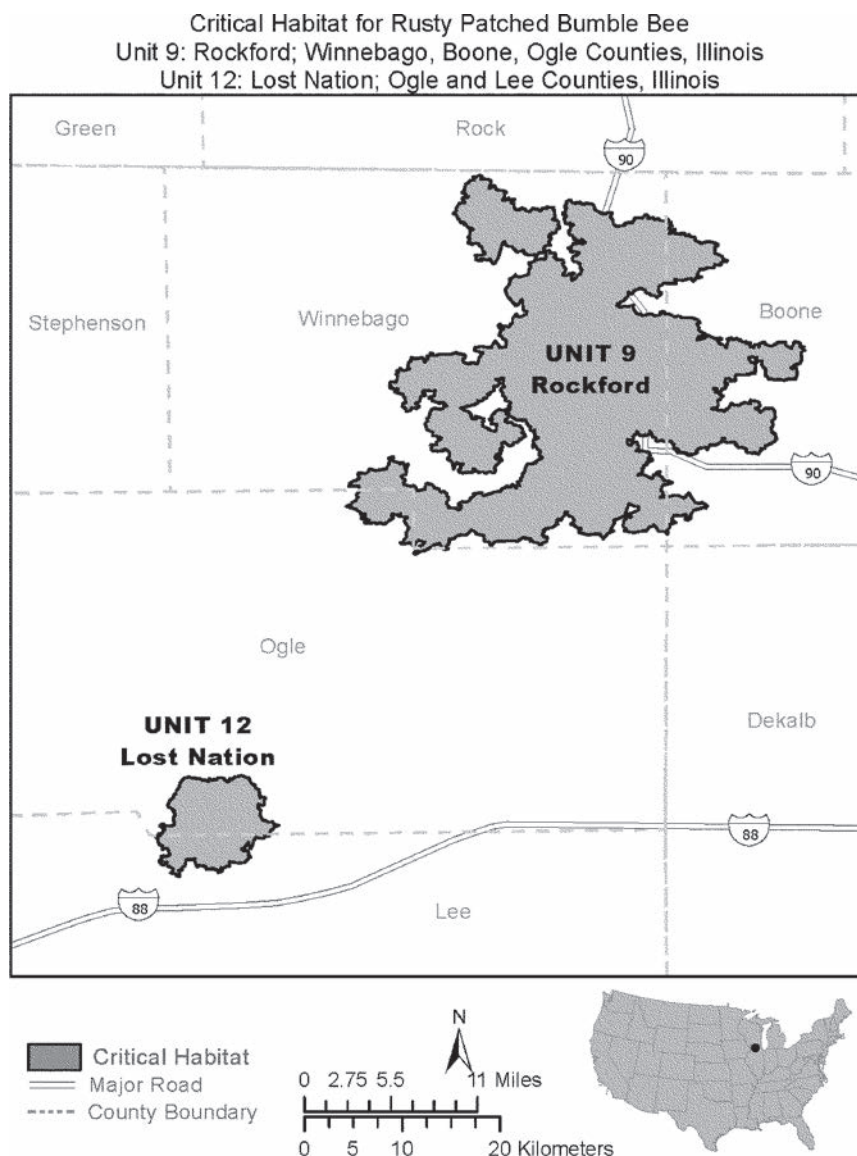
(i) Unit 9 consists of 150,108 ac (60,747 ha) in Boone, Ogle, and Winnebago Counties. This unit includes primarily private lands (136,826 ac

(55,371 ha)), local government-owned lands (7,898 ac (3,196 ha)), university or school lands (2,395 ac (969 ha)), and Illinois State lands (2,990 ac (1,210 ha)). Approximately 669 ac (271 ha) of private lands in this unit are managed

by the USDA–NRCS Wetlands Reserve Program.

(ii) Map of Unit 9 and 12 follows:

Figure 6 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (14)(ii)



(15) *Unit 10*: McHenry; McHenry and Lake Counties, Illinois, and Kenosha County, Wisconsin.

(i) Unit 10 consists of 68,295 ac (27,638 ha) in McHenry and Lake Counties, Illinois, and Kenosha County, Wisconsin. This unit includes primarily private lands (59,158 ac (23,940 ha)),

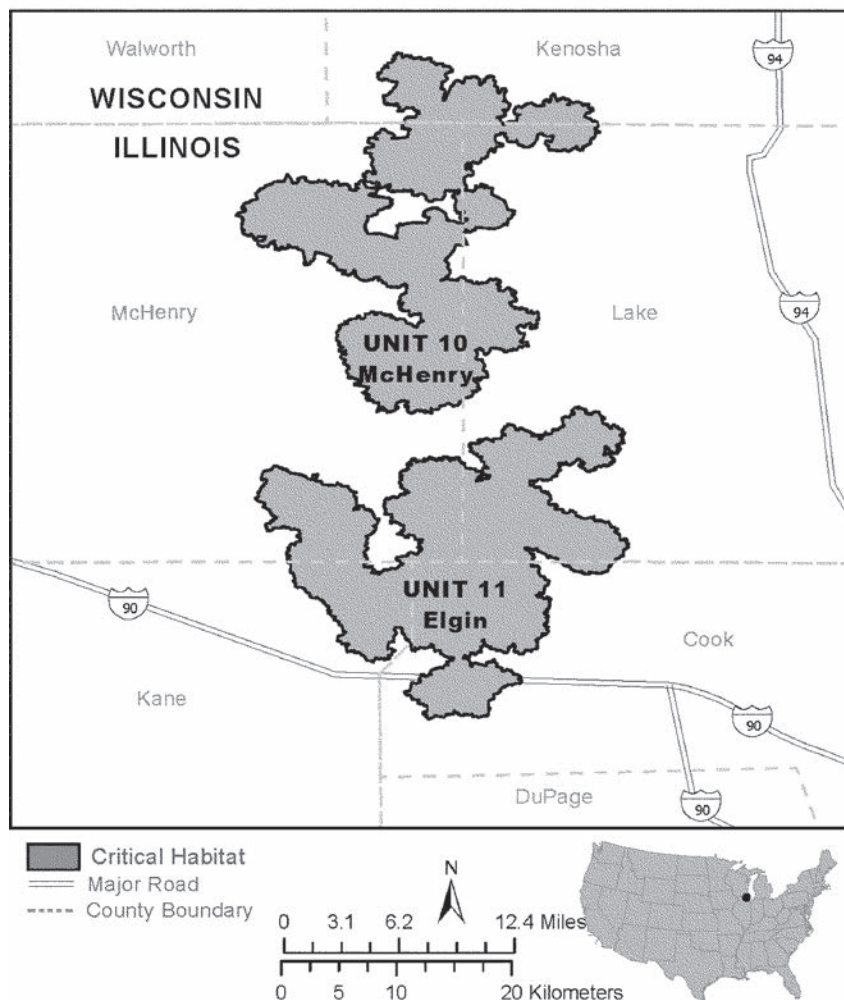
local government-owned lands (1,406 ac (569 ha)), university or school lands (2,284 ac (924 ha)), and Illinois State lands (5,445 ac (2,204 ha)). The Bureau of Land Management owns 2 ac (1 ha) of land in this unit. A conservation easement within the Hackmatack National Wildlife Refuge, managed by

the Service, falls partially (39 ac (16 ha)) within this unit. Approximately 412 ac (167 ha) of private lands within this unit are managed by the USDA–NRCS Wetlands Reserve Program.

(ii) Map of Units 10 and 11 follows:

Figure 7 to Rusty Patched Bumble Bee
(*Bombus affinis*) Paragraph (15)(ii)

Critical Habitat for Rusty Patched Bumble Bee
 Unit 10: McHenry; McHenry and Lake County, Illinois; Kenosha County, Wisconsin
 Unit 11: Elgin; Lake, Cook, Kane, McHenry Counties, Illinois



(16) *Unit 11*: Elgin; Lake, Cook, Kane, and McHenry Counties, Illinois.

(i) *Unit 11* consists of 75,080 ac (30,384 ha) in Cook, Kane, Lake, and McHenry Counties. This unit includes primarily private lands (56,318 ac (22,791 ha)), local government-owned lands (13,710 ac (5,548 ha)), university or school lands (4,884 ac (1,977 ha)), and Illinois State lands (168 ac (68 ha)).

(ii) Map of *Unit 11* is provided at paragraph (15)(ii) of this entry.

(17) *Unit 12*: Lost Nation; Ogle and Lee Counties, Illinois.

(i) *Unit 12* consists of 15,043 ac (6,088 ha) in Lee and Ogle Counties. This unit is composed of private lands (14,416 ac (5,834 ha)), including 2,189 ac (886 ha) owned by nongovernmental organizations, and State lands owned by Iowa Department of Natural Resources (627 ac (254 ha)).

(ii) Map of *Unit 12* is provided at paragraph (14)(ii) of this entry.

(18) *Unit 13*: Iowa City; Johnson County, Iowa.

(i) *Unit 13* consists of 45,902 ac (18,576 ha) in Johnson County. This

unit includes primarily private lands (30,397 ac (12,301 ha)), local government-owned lands (1,857 ac (751 ha)), and Iowa State lands (2,287 ac (926 ha)). Federal lands (11,362 ac (4,598 ha)) in this unit include U.S. Army Corps of Engineers' Coralville Lake and the Coralville Reservoir. A portion of the U.S. Army Corps of Engineers' land in this unit is managed by the State of Illinois (1,333 ac (539 ha)) and the University of Iowa (421 ac (170 ha)).

(ii) Map of *Unit 13* follows: