

Statement of Work or Specifications and ensuring that the such items reflect DOE's minimum needs;

(2) Obtaining any needed approvals relating thereto; and,

(3) Developing appropriate criteria and methods for evaluating the security requirements, features, and assurances for inclusion in the solicitation.

(b) With regard to a particular acquisition, the contracting officer shall develop appropriate provisions and clauses for inclusion, respectively, in the solicitation and contract that ensure contractor compliance with DOE's security and privacy requirements, features, and assurances.

939.1002-70 Federal standards.

(a) Whenever an acquisition requires the delivery or use of, or access to, DOE-owned or -controlled FIP resources, the office initiating the procurement request shall be responsible for:

(1) Determining the appropriate FIP standards to be included in the Statement of Work or Specifications; and,

(2) Obtaining a waiver if it has been determined that inclusion of the mandatory FIP standard would adversely impact the mission accomplishment and/or cause major adverse financial impact which is not offset by Governmentwide savings.

(b) With regard to a particular acquisition, the contracting officer shall develop appropriate provisions and clauses for inclusion, respectively, in the solicitation and contract that ensure contractor compliance with mandatory FIP standards.

939.1003-70 Purchase of Energy Efficient Computers (Energy Star).

(a) Executive Order 12845, "Purchase of Energy Efficient Computers by Federal Agencies," requires agencies to acquire microcomputers, including personal computers, monitors, and printers, that meet the "Energy Star" requirements established by the Environmental Protection Agency for energy efficiency. Solicitations for microcomputers and peripheral equipment, issued after October 21, 1993, are required to include a requirement that equipment meet the "Energy Star" standard, unless an exemption has been provided by the Head of the Contracting Activity.

(b) The office initiating the procurement request is responsible for ensuring that the "Energy Star" performance requirement(s) are included in the statement of work/specification in accordance with Departmental policies. The contracting officer shall not process any

procurement request that does not contain these requirements, unless an exemption has been authorized. Evaluation criteria shall include a proper evaluation of these requirements.

Subparts 939.11 through 939.16— [Reserved]

Subpart 939.17—Special Contracting Methods

939.1701-470 Contract period of performance.

(a) Except as provided in paragraph (b) of this section, the period of performance of contracts for, or that include, FIP services and support services shall not exceed 5 years, except that contracts for, or including, FIP services and support services not subject to the Service Contract Act of 1965 may exceed 5 years when:

(1) Such services or support services are a direct part of the development, installation, and operation of a specific FIP system, subsystem, equipment, or software;

(2) The requirement to provide services or support services was considered in the acquisition planning stage;

(3) Such services can be identified in the contract Statement of Work;

(4) Firm prices for such services and support services can be established in the contract;

(5) The providing of such services or support services will not extend for a period of 5 years beyond the last date of delivery of the FIP system, subsystem, equipment, or software; and

(6) No other statutory restrictions exist which limit the period of performance of the contract.

(b) The period of performance of contracts for telecommunications services awarded under GSA's special telecommunications authority may be for a period of up to 10 years.

Subparts 939.18 through 939.43— [Reserved]

Subpart 939.44—Subcontracting Policies and Procedures

939.4470 Contractor acquisitions of FIP resources.

(a) *Management and operating (M&O) contracts:* M&O contractors and their subcontractors shall not be used to acquire FIP resources unrelated to the mission of the M&O contract either for sole use by DOE employees or employees of other DOE contractors, or for use by other Federal agencies or their contractors.

(b) *Other than M&O contracts:* Where it has been determined that a contractor

(other than an M&O contractor or its subcontractor) will acquire FIP resources either for sole use by DOE employees or for the furnishing of the FIP resources as government-furnished property under another contract, DOE will obtain any needed procurement authority from GSA prior to having the contractor acquire the FIP resources.

Subparts 939.45 through 939.53— [Reserved]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB97

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Louisiana Black Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to designate critical habitat for the Louisiana black bear (*Ursus americanus luteolus*), a subspecies that was listed as threatened on January 7, 1992. Critical habitat was not proposed at the time the listing was proposed (June 21, 1990) due to a determination that designation of critical habitat was not then prudent. If this proposed action is made final, Federal actions that may affect critical habitat will be subject to section 7(a)(2) of the Endangered Species Act of 1973, as amended. The Service solicits data and comments from the public on all aspects of this proposal, including additional information on the economic effects (costs and benefits) of the designation, methods of evaluating costs, noneconomic benefits accruing from the designation, the amount and distribution of occupied and available habitat, and why any particular lands should or should not be designated as critical habitat.

DATES: Comments from all interested parties must be received by March 2, 1994. Public hearing requests must be received by January 18, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert Bowker, Complex Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will

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

FOR FURTHER INFORMATION CONTACT:
Wendell A. Neal, at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act), requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species as endangered or threatened. The Service proposed listing the Louisiana black bear as threatened on June 21, 1990 (55 FR 25341), primarily due to historic habitat loss and continuing vulnerability to such losses, but proposing critical habitat was determined to be not prudent at that time. However, in the final rule listing the Louisiana black bear (57 FR 588), the Service changed its earlier finding by determining that designation of critical habitat may be prudent, but was not then determinable.

Critical Habitat

Critical habitat as defined by section 3 of the Act, means: (I) 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 (i) essential to the conservation of the species and (ii) that may require special management considerations or protection, and (ii) 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.

With information from Weaver and Pelton (in press), Weaver (1992), Chandler (Tensas River National Wildlife Refuge, pers. comm. 1992), Pace (U.S. Fish and Wildlife Service Coop Unit, LSU, pers. comm. 1992), Hammond (1989), and Shropshire (Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1992) regarding present occurrence of Louisiana black bears, and an assessment of habitat contiguously or closely located to bear populations (Simmering, *in litt.* 1992; U.S. Army Corps of Engineers, *in litt.* 1992), three critical habitat areas (CHAs) are being proposed: (1) the Tensas River Basin CHA; (2) the Atchafalaya River Floodway CHA; and (3) the lower Iberia-St. Mary Parish CHA. The total area of proposed CHAs is approximately 3 million acres. Yet, all of the area within CHAs is not actually critical habitat.

Critical habitat is limited to the areas of the three CHAs that contain the characteristics necessary for the species' conservation (approximately 1.25 million acres).

The Service's listing regulations 50 CFR 424.12(b)(5) require consideration of those physical and biological attributes essential to the conservation of the species. Such requirements, as stated in 50 CFR 424.12(b)(5) include, but are not limited to, the following:

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

The Service has determined that physical and biological habitat features (referred to as the primary constituent elements) that support denning, foraging, escape cover and dispersal are essential to the conservation of the Louisiana black bear. These elements are associated with tracts of bottomland hardwoods. This determination also considers that the Louisiana subspecies is likely no different than other black bears in being a habitat generalist. According to Hillman (1989), the adaptable black bear needs neither wilderness, its equivalent in parks and habitat preserves, nor managed forests for survival. The black bear uses virtually all elements of an ecosystem. Ecosystem features that are essential for conservation of the Louisiana black bear are entirely associated with bottomland hardwood forests. Bottomland forests with high species and age class diversity contain essential escape cover, denning sites, and hard and soft mast supplies for supporting black bear populations. Large cypress (*Taxodium distichum*) or tupelo gum (*Nyssa aquatica*) with cavities that are commonly found along water courses may be important for denning given the history of flooding in the bottomlands of Louisiana. The proposed CHAs include areas within the geographical area occupied by the species at the time it was listed, as well as specific areas outside the geographical area occupied by the species at the time it was listed, which are essential to the conservation of the species. Areas outside occupied range are essential for conservation of the Louisiana black bear because of the need to reduce threats associated with forest fragmentation and to provide

corridors for movement and genetic exchange among bears in Louisiana, as well as between Louisiana bears and bears in Arkansas.

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such a designation. By definition, critical habitat affects only Federal agency actions and does not apply to private, or local or State government activities that are not subject to Federal authorization or funding. Actions that adversely affect critical habitat for this species include the removal or fragmentation of forest habitat that may indirectly cause an increase in human-associated or human-induced disturbances. The primary activity that could adversely affect critical habitat is conversion of forestland to open farmland conditions, regardless of the particular crop planted. Some of this forestland conversion would already be affected by the application of the jeopardy standard of section 7. Thus, only a subset of the Federal actions associated with forestland conversion would be affected by the designation of critical habitat and the application of the adverse modification standard of section 7.

A second but major activity that will be subject to section 7 of the Act is the U.S. Army Corps of Engineers' Development and Environmental Easement Program, which is intended to involve 338,000 acres in the Atchafalaya Basin. The easement areas will comprise about half the forested area in the proposed Atchafalaya Basin CHA and therefore holds the potential for having substantive impacts on the conservation of the Louisiana black bear. The prohibition against adverse modification of critical habitat in this instance is expected to serve as an important additional protection to the bear's habitat.

Another Federal activity that may be affected by critical habitat designation is the permitting program of the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. If a final designation is made, permit review by the Corps would need to insure that issuance is not likely to result in the destruction or adverse modification of critical habitat for the Louisiana black bear. Only those activities that require permit review and may affect the critical habitat for the Louisiana black bear would be affected; these activities include the filling or clearing of forested wetlands. Other activities that do not require a Federal permit or do not

involve Federal funding would not be affected by this rule if made final.

Management and operations of the four National Wildlife Refuges within critical habitat (Tensas River, Atchafalaya, Lake Ophelia, and Farmer's Home Interest - State of Louisiana) will not only be in compliance with the prohibitions of section 7 of the Act, but will address conservation and recovery needs of the Louisiana black bear. Since the threatened status of the Louisiana black bear already requires these efforts, the proposed critical habitat designation is not expected to have any additional effect on these areas.

Other Federal actions that must comply with section 7 and the adverse modification standard, should this proposal be made final, include disposition of Farmers Home Administration properties, the pesticide registration program of the Environmental Protection Agency, as well as activities of the Soil Conservation Service.

Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of designating a particular area as critical habitat. The Service's initial economic analysis does not fully analyze the entire range of the economic impacts, both positive and negative, of the proposed designation. To allow for the completion of the analysis and the fullest possible public comment on the economic effects of the proposed designation, the Service is requesting public comment concerning several specific economic issues. (See discussion under "Public Comments Solicited" below.) The Service will consider all additional relevant information on such impacts in deciding which areas should be included in or excluded from critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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 and by various groups and individuals. The Endangered Species 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 measures provided to listed species by Federal agencies are summarized below.

Section 7(a) of the Act, as amended, 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 being designated. 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 informally with the Service 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 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 a listed 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 formal consultation with the Service.

Federal agencies with known jurisdiction in the proposed critical habitat for the Louisiana black bear include the U.S. Fish and Wildlife Service, the U.S. Army Corps of Engineers, the U.S. Dept. of Agriculture, Soil Conservation Service, the Farmers Home Administration, and the Environmental Protection Agency. Known or potential projects that will require consultation are summarized in the Critical Habitat section above.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought 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;

(2) Current or planned activities in the subject area and their possible impacts on this species;

(3) Any foreseeable economic and other impacts resulting from the proposed designation of critical habitat;

(4) Economic values associated with benefits of designating critical habitat for the Louisiana black bear; and

(5) The methodology the Service might use, under Section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

The final decision on this proposed regulation on designating critical habitat for the Louisiana black bear will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

Requests for a public hearing on this proposal must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has determined that this is not a major rule as defined by Executive Order 12291 and that the rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). Based on the information currently available and discussed in this rule and the draft economic analysis concerning public projects and private activities within critical habitat, it does not appear that significant economic impacts will result from the critical habitat designation. However, the Service is requesting additional information on anticipated activities within the proposed critical habitat area and the potential economic impacts that may result from designating critical habitat. The Service will prepare a final economic analysis after receipt of additional information and prior to a final determination on this proposed rule.

Executive Order No. 12630 requires that Federal actions that may affect the value or use of private property be accompanied by a "Takings Implications Assessment." Although Takings Implications Assessments are not required prior to endangered and threatened species listing decisions, which must be based solely on biological information, such assessments may be appropriate for certain rulemakings involving critical habitat designation. The Service will consider whether a Takings

Implications Assessment is necessary prior to a final decision on the proposed designation.

The rule does not require a federalism assessment under Executive Order 12612 since it will not have any significant federalism effects as described in the order. The rule only relates to Federal lands and other lands where there is Federal involvement; no intrusion on State policy or administration is expected, and roles and responsibilities of Federal and State governments will not change, and fiscal capacity will not be substantially affected.

The rule contains no collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501, et seq. Finally, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

References Cited

Hammond, A.S. 1989. Status of the black bear in Louisiana in 1988. M.S. Thesis, 97 pp.
 Hillman, L.L. 1989. Maintaining the black bear in the southern Appalachians. Presented at the Conference: Restoring Biodiversity in the Southern Appalachians: A Strategy for Survival. 10 pp.

Weaver, K.M. 1992. Louisiana status report. Ninth Eastern Workshop on Black Bear Res. and Manage. Ontario, Canada. 14 pp.

Weaver, K.M. and M.R. Pelton. In press. Denning ecology of black bears in the Tensas River Basin of Louisiana. Int. Conf. Bear Res. and Manage.

Author

The primary author of this proposed rule is Wendell A. Neal (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

§ 17.11 [Amended]

2. Section 17.11(h) is amended by revising the Critical Habitat column for Bear, Louisiana black, under MAMMALS, to read "17.95(a)".

3. Section 17.95(a) is amended by adding critical habitat of the Louisiana black bear in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(a) * * *

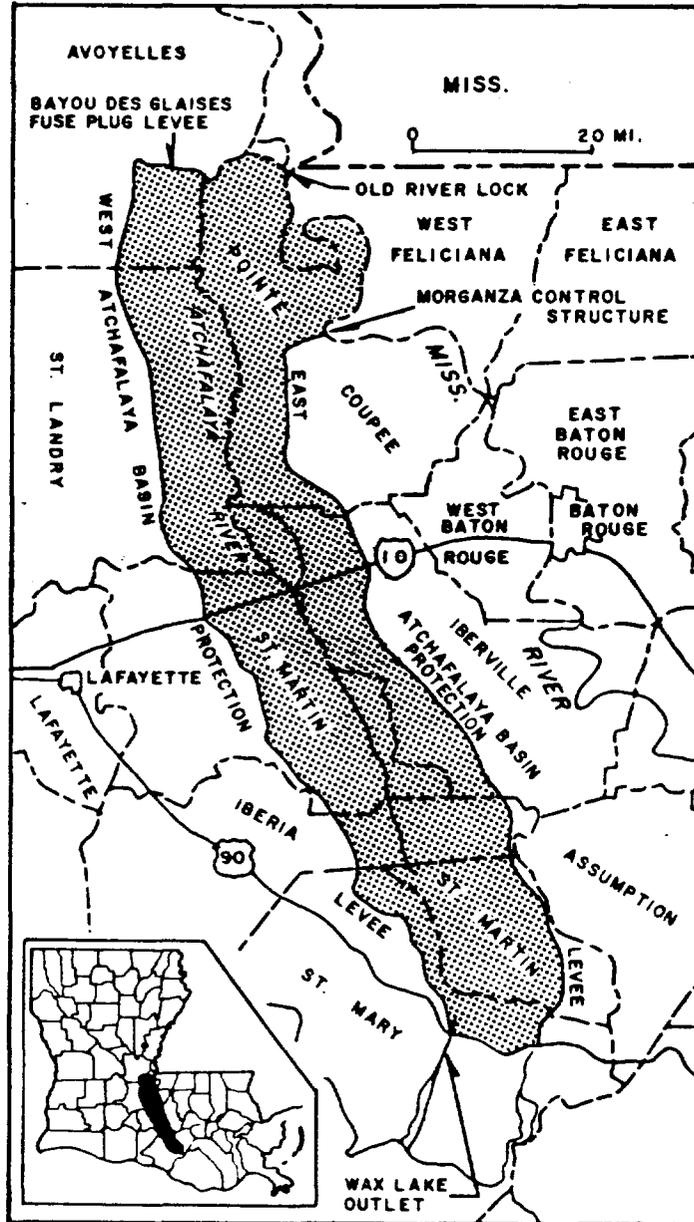
LOUISIANA BLACK BEAR (*Ursus americanus luteolus*)

Louisiana. Within the following boundaries:

(1) The area within the Atchafalaya River basin starting at the Old River Lock at the juncture of Old River and the Mississippi River, south along the Atchafalaya River to Bayou Des Glaises Fuse Plug Levee, then west to West Atchafalaya Basin Protection Levee south to Wax Lake Outlet, south to U.S. Highway 90, then east to the East Atchafalaya Basin Protection Levee, thence north to Morganza Control Structure, then North along Mississippi River to the point of beginning. The constituent elements include forested tracts within this area.

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LOUISIANA BLACK BEAR
ATCHAFALAYA BASIN CRITICAL HABITAT AREA
LOUISIANA



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THIS MAP COMPILED FROM U.S.G.S. STATE MAP (1:500000)

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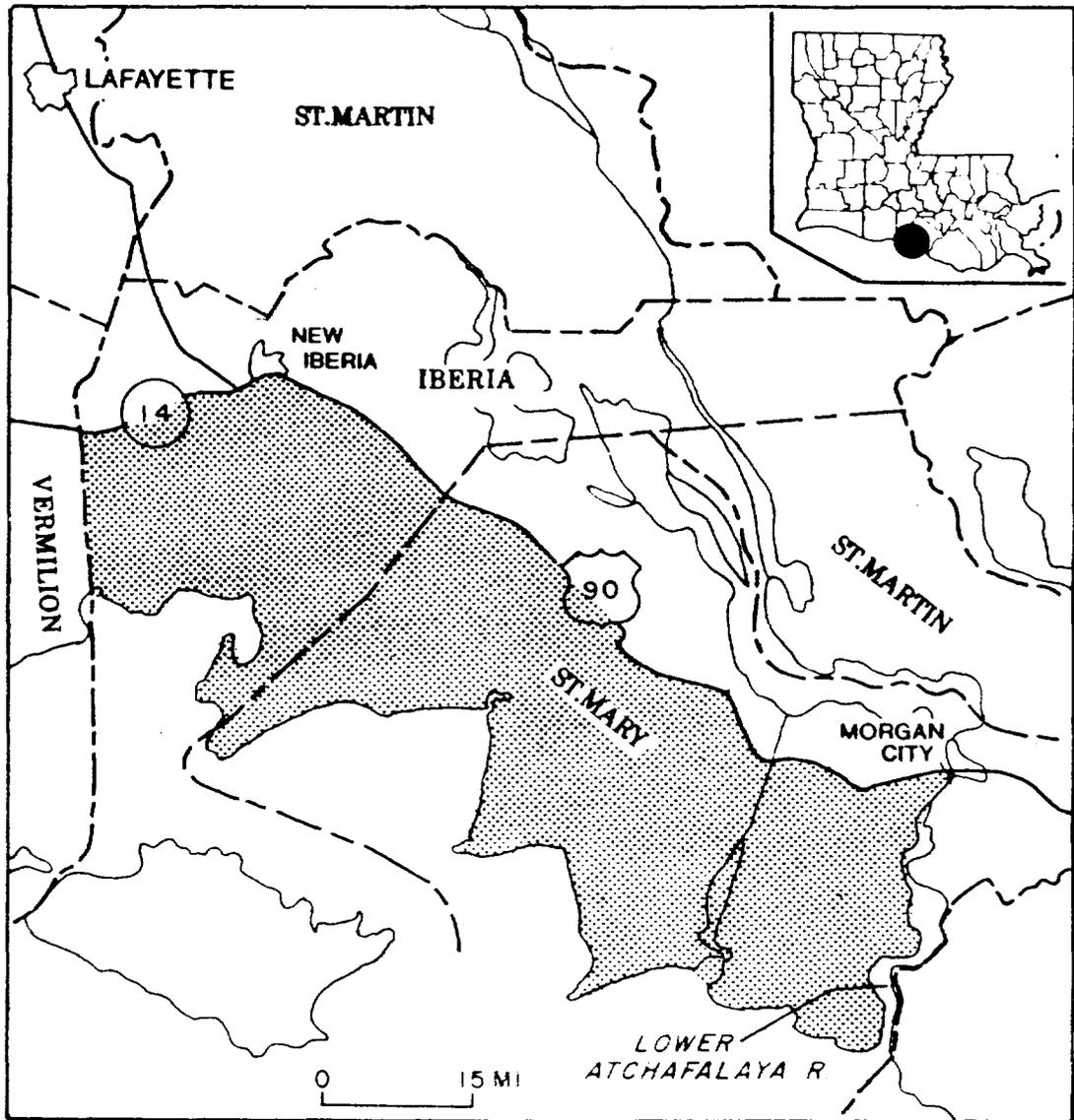
(2) The areas south of U.S. Highway 90, west from the lower Atchafalaya River outlet along the coastline to the

Vermillion Parish line, north to Highway 14, thence east to U.S.

Highway 90. The constituent elements include forested tracts within this area.

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LOUISIANA BLACK BEAR
LOWER IBERIA-ST. MARY PARISH CRITICAL HABITAT AREA
LOUISIANA



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(3) The lands contained within an area bounded by the main channel of the Mississippi River on the east, Arkansas State line on the north, Highway 17 south to U.S. Highway 80; from that point east to Bayou Macon, and south to its juncture with the

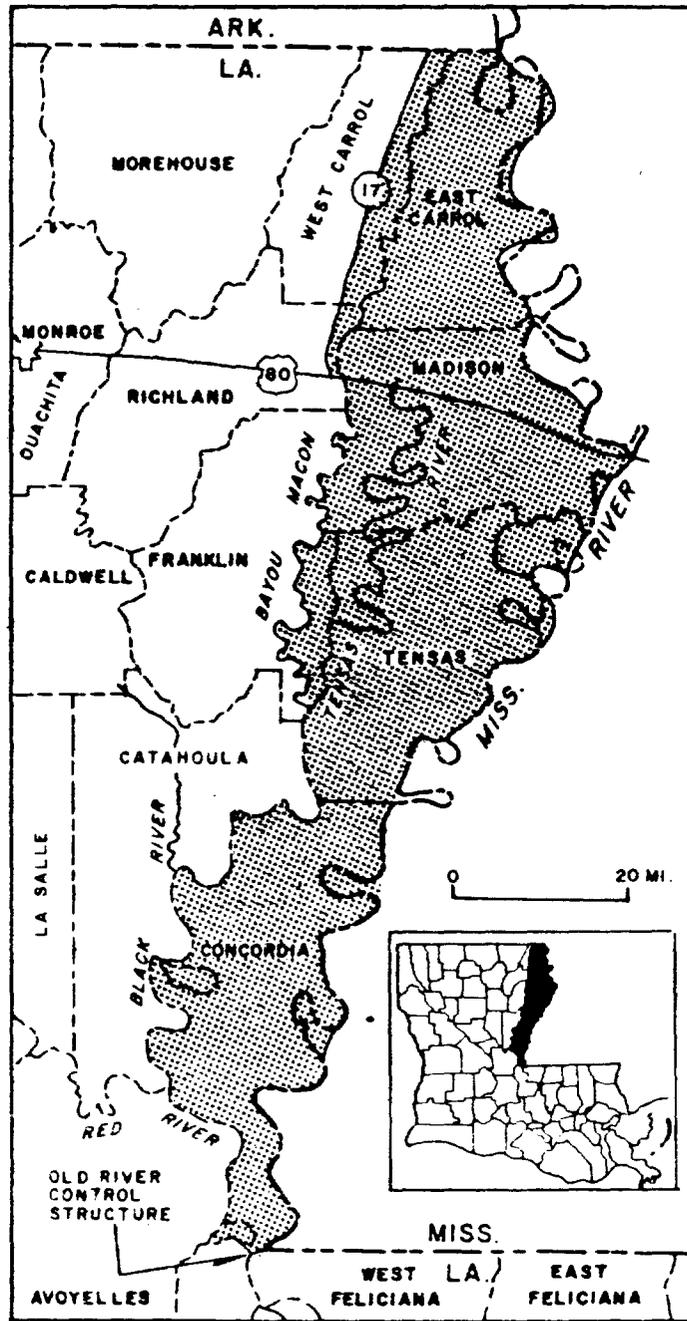
Tensas River; south down the Tensas River to its juncture with the Black River and south to its juncture with the Red River, thence south to the Old River Control Structure. The constituent elements include forested tracts within this area.

Mississippi. The area of Mississippi lying south of Washington County and west of the Main channel of Mississippi River. The constituent elements include forested tracts within this area.

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LOUISIANA BLACK BEAR
TENSAS BASIN CRITICAL HABITAT AREA
LOUISIANA



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Dated: September 2, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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