DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN–1018–AJ16

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the California Red-legged Frog (*Rana aurora draytonii*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the California red-legged frog (*Rana aurora draytonii*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 1,674,582 hectares (4,138,064 acres) in Alameda, Butte, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Napa, Plumas, Riverside, San Benito, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, and Ventura Counties, California, is proposed for designation as critical habitat.

This proposed designation of critical habitat for the California red-legged frog is being published in accordance with the November 6, 2002, consent decree that ordered us to publish a proposal by March 2004. In light of this deadline, we have based this proposal solely on the configuration of our previously published final designation of critical habitat for the California red-legged frog (66 FR 14626, March 13, 2001). We hereby solicit data and comments from the public on all aspects of this proposal, incuding data on economic and other impacts of the designation.

We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods or otherwise available to us.

DATES: We will accept comments until June 14, 2004. Public hearing requests must be received by May 28, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825.

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414–6712.

3. You may send your comments by electronic mail (e-mail) to *fw1crlf@r1.fws.gov.* For directions on how to submit electronic filing of comments, see the "Public Comments Solicited'' section below. In the event that our Internet connection is not functional, please submit comments by the alternate methods mentioned above.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For general information, and for information about Alameda, Butte, Contra Costa, El Dorado, Fresno, Kern, Marin, Mariposa, Merced, Napa, Plumas, San Joaquin, San Mateo, Santa Clara, Solano, Sonoma, Stanislaus, Tehama, and Tuolumne Counties, contact Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, California 95825 (telephone 916/414–6600; facsimile 916/414–6712).

For information about Monterey, Los Angeles, San Benito, San Luis Obispo, Santa Barbara, Santa Cruz, and Ventura Counties, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2394 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766; facsimile 805/644–3958).

For information about areas in the San Gabriel Mountains of Los Angeles County or Riverside and San Diego Counties, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate 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. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, in which case they would be removed from or made part of the final designation. We particularly seek comments concerning:

(1) The reasons why any areas 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 resulting from the designation;

(2) Specific information on the amount and distribution of California red-legged frog and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Whether the primary constituent elements for the California red-legged frog as defined in this proposal are biologically and scientifically accurate, specifically,

(a) Whether aquatic habitat used for breeding must have a minimum deep water depth of 0.5 meters (m) (20 inches (in));

(b) Whether aquatic components must consist of two or more breeding sites located within 2 kilometers (km) (1.25 miles (mi)) of each other;

(c) Should the primary constituent elements be more descriptive of the variations in habitat preference throughout the range of the subspecies;

(4) Whether the two recently discovered populations of California red-legged frogs in Youngs Creek, in Calaveras County, and in artificial ponds in Nevada County are essential to the conservation of the subspecies and should be included in designated critical habitat;

(5) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(6) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;

(7) Some of the lands we have identified as essential for the conservation of the California red-legged frog are not being proposed as critical habitat. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas are essential;

(b) Whether these areas warrant exclusion; and

(c) The basis for not designating these areas as critical habitat (section 3(5)(A) or section 4(b)(2) of the Act);

(8) With specific reference to the recent amendments to sections 4(a)(3) and 4(b)(2) of the Act, we request information from the Department of Defense to assist the Secretary of the Interior in excluding critical habitat on lands administered by or under the

control of the Department of Defense based on the benefit of an Integrated Natural Resources Management Plan (INRMP) to the conservation of the species; and information regarding impacts to national security associated with proposed designation of critical habitat; and

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018–AJ16'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916/414–6600. Please note that the e-mail address *fw1crlf@r1.fws.gov* will be closed out at the termination of the public comment period. In the event that our Internet connection is not functional, please submit comments by the alternate methods mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Preamble

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA [Act] can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.''

Currently, only 445 or 36 percent of the 1244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat (Service 2004). We address the habitat needs of all 1244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own to proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the Administrative Procedure Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with National Environmental Policy Act (NEPA); all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that are not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Species Description

The California red-legged frog (*Rana aurora draytonii*) is the largest native frog in the western United States. It is endemic to California and Baja California, Mexico. It is typically found from sea level to elevations of approximately 1,500 meters (m) (5,000 feet (ft)). The California red-legged frog ranges in body length from 40 to 130 millimeters (mm) (1.6 to 5.1 in), with

adult females attaining a significantly longer body length than males (138 mm (5.4 in) versus 116 mm (4.6 in)) (Hayes and Miyamoto 1984). The posterior abdomen and hind legs of adults vary in color, but are often red or salmon pink; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish-brown background. Dorsal spots usually have light centers (Stebbins 1985), and the dorsolateral folds (folds along the sides of the frog) are prominent. Larvae range from 14 to 80 mm (0.6 to 3.1 in) in length, and the background color of the body is dark brown or olive with darker spots (Storer 1925). A line of very small, indistinct gold-colored spots are thought to become the dorsolateral fold. The California red-legged frog is one of two subspecies of the red-legged frog (*R. aurora*). For a detailed description of the two subspecies, see the Recovery Plan for the California Red-legged Frog (Service 2002) and references identified within the plan.

Life History

Male California red-legged frogs appear at breeding sites 2 to 4 weeks before females (Storer 1925). A pair in amplexus (breeding position) moves to an oviposition site (the location where eggs are laid), and the eggs are fertilized while being attached to a brace. Braces include emergent vegetation such as bulrushes (*Scirpus* sp.), cattails (*Typha* sp.), or roots and twigs, although breeding has been documented in ponds without emergent vegetation (Steven Bobzien *in litt.* 2001). Each mass contains about 2,000 to 5,000 individual eggs measuring approximately 2.0 to 2.8 mm (0.08 to 0.11 in) in diameter. Eggs hatch in 6 to 14 days depending on water temperatures (Jennings *et al.*, 1992). Larvae typically metamorphose between July and September 3.5 to 7 months after eggs are laid (Storer 1925; Wright and Wright 1949). However, several researchers have recently observed larvae to overwinter in Contra Costa, Marin, Santa Clara, and San Luis Obispo Counties (Bobzien *et al.* 2000), and possibly in Ventura County (R. Smith, Los Angeles Zoo, *in litt.* 2001), with new metamorphs being observed in March and April.

Of the various life stages, larvae probably experience the highest mortality rates. Survival rate from hatching to metamorphosis (the process of changing from a tadpole to a frog) has been estimated as less than 1 percent (Jennings *et al.* 1992), 1.9 percent (Cook 1997), or less than 5 percent (Lawler *et al.* 1999) for California red-legged frog tadpoles co-occurring with bullfrog tadpoles, and 30 to 40 percent for California red-legged frog tadpoles occurring without bullfrogs (Lawler *et al.* 1999). Sexual maturity can be attained at 2 years of age by males and 3 years of age by females (Jennings and Hayes 1985), with adults living 8 to 10 years (Jennings, U.S. Geological Survey (USGS), Biological Resources Division (BRD), pers. comm. 2000). However, the average life span is probably much lower (Scott, USGS, BRD, pers. comm. 2000).

Geographic Range

The historic range of the California red-legged frog extended along the coast from the vicinity of Point Reyes National Seashore, Marin County, California, and inland from the vicinity of Redding, Shasta County, California, southward to northwestern Baja California, Mexico (Jennings and Hayes 1985; Hayes and Krempels 1986). California red-legged frogs have been documented in 46 counties in California, but now remain in only 248 streams or drainages in 26 counties; the subspecies has lost approximately 70 percent of its former range (61 FR 25813, May 23, 1996). California red-legged frogs are still locally abundant within portions of the San Francisco Bay area (including Marin County) and the central coast. Within the remaining distribution of the subspecies, only isolated populations have been documented in the Sierra Nevada, northern Coast, and northern Transverse ranges. The subspecies was previously believed to be extirpated (exterminated) from most of its range in the southern Transverse and Peninsular Ranges, but two additional populations have recently been discovered. The species is still present in Baja California, Mexico (California Natural Diversity Data Base (CNDDB) 1998; Service, *in litt.* 2003).

Threats

The California red-legged frog was listed as a threatened subspecies on May 23, 1996 (61 FR 25813). Habitat loss and alteration, overexploitation, and introduction of exotic predators were significant factors in the subspecies' decline in the early-to-mid-1900s. Reservoir construction, expansion of introduced predators, management of grazing in riparian areas resulting in loss of stream bank habitat and plunge pools, and prolonged drought fragmented and eliminated many of the Sierra Nevada foothill populations. Only a few drainages currently support California red-legged frogs in the Sierra Nevada foothills, compared to more than 60 historical records. In Northern California, few California red-legged frog populations occupy naturally occurring wetland environments. As natural wetlands and streams were converted for agriculture, flood control, and urban development, California red-legged frogs colonized small artificial impoundments created by cattle ranchers for the purpose of providing water for their cattle. Without these impoundments, the range of California red-legged frogs would be limited further in this region.

Several researchers have attributed the decline and extirpation of California red-legged frogs to the introduction of bullfrogs (*Rana catesbeiana*) and predatory fishes (Hayes and Jennings 1986; Moyle 1973). This decline has been attributed to both predation and competition. Twedt (1993) observed the predation of juvenile northern red-legged frogs (*R. aurora aurora*) and suggested that bullfrogs may prey on subadult red-legged frogs. This is supported by Cook (Sonoma County Water Agency, in litt. 2000) and David Cook and M. Jennings (in litt. 2000), who documented bull frog predation of both tadpoles and juvenile California red-legged frogs, as well as a large adult, by bullfrogs. In addition, bullfrogs may have a competitive advantage over red-legged frogs. Bullfrogs are larger, have more generalized food habits (Bury and Whelan 1984), and have an extended breeding season (Storer 1933) during which an individual female produces as many as 20,000 eggs (Emlen 1977). Further, bullfrog larvae are unpalatable to predatory fish (Kruse and Francis 1977). Bullfrogs also interfere with red-legged frog reproduction. Both California and northern red-legged frogs have been observed in amplexus with both male and female bullfrogs (Twedt 1993; Service files).

California red-legged frogs are currently threatened by human activities, many of which operate concurrently and cumulatively with each other and with natural disturbances (*e.g.*, droughts and floods). Current factors associated with declining populations of the frog include degradation and loss of habitat through urbanization, mining, improper management of grazing, recreation, invasion of nonnative plants, impoundments, water diversions, degraded water quality, and introduced predators. These factors have resulted in the isolation and fragmentation of habitats within many watersheds, often precluding dispersal between subpopulations and jeopardizing the viability of metapopulations (broadly defined as multiple subpopulations that occasionally exchange individuals through dispersal and are capable of

colonizing or rescuing habitat patches when the local subpopulations have been extirpated). The fragmentation of existing habitat, and the continued colonization of existing habitat by nonnative species, may represent the most significant current threats to California red-legged frogs.

Numerous studies have demonstrated the impacts of fragmentation on other anuran (frog and toad) species. Urban populations of common frogs (*Rana temporaria*) were more genetically distinct than rural populations (Hitchins and Beebee 1997). Based on genetic analysis, Reh and Seitz (1990) found that highways effectively isolated *R. temporaria* populations. Kuhn (1987, in Reh and Seitz 1990) estimated that 24 to 40 cars per hour killed 50 percent of common toad (*Bufo bufo*) individuals migrating across a road, while Heine (1987, in Reh and Seitz 1990) found that 26 cars per hour could reduce the survival rate of toads crossing roads to zero. In addition, Fahrig *et al.* (1995) found a significant negative correlation between traffic density and the density of anuran populations. Thus, heavily traveled roads are an important human-caused landscape component, hindering amphibian movement through vehicle strikes and thereby fragmenting amphibian populations.

In addition to the fragmentation of habitat, activities that occur on upland habitats can have both direct and indirect significant deleterious impacts on California red-legged frogs. For example, amphibian species-richness (number of species in an area) is related to land use in the watersheds of Puget Sound, Washington (Richter and Azous 1995, 1997); species-richness was significantly lower in watersheds where more than 40 percent of the land area was developed. This was attributed to increases in the total water level fluctuations within wetlands (*e.g.*, both increases in the number of fluctuations of water levels within the wetland and increases in the magnitude of fluctuations). Specifically, urbanization leads to higher peak flows and volumes, resulting in increases in the magnitude, frequency, and duration of wetland hydroperiods and stream levels (Reinalt and Taylor 1997). Urbanization within the range of the California red-legged frog often results in similar effects on wetlands.

Urbanization results in additional water runoff sources into wetlands and stream courses associated with irrigation and home use activities, especially during the summer months. This often drastically alters the hydroperiod and converts intermittent streams and seasonal wetlands to perennial aquatic habitat. Such alteration allows nonnative species such as bullfrogs and nonnative warm water fish species to invade the habitat and further adversely affect California red-legged frog populations. California red-legged frogs are rarely found in areas where a large majority of the watershed has been developed (H.T. Harvey and Associates 1997, Service files). This is further supported by Schueler (1994), who summarized research examining macroinvertebrate and fish diversity. Those results illustrated the difficulty of maintaining predevelopment stream quality when watershed development exceeds 10–15 percent impervious cover. For example, Klein (1979, in Schueler 1994) found that macroinvertebrate diversity consistently became poor when watershed imperviousness exceeded 10 to 15 percent; this has been supported by Schueler and Galli (1992 in Schueler 1994) and Shaver *et al.* (1994, in Schueler 1994). This loss of diversity has also been observed in fish (Klein 1979; Limburg and Schmidt 1990, both in Schueler 1994).

In addition to the modification of hydroperiod, impacts within the watershed can also affect water and habitat quality. As watersheds are developed, the area of impervious surface increases, resulting in an increase of sediments containing organic matter, pesticides and fertilizers, heavy metals, hydrocarbons, and other debris entering streams and wetlands (U.S. Environmental Protection Agency (EPA) 1993). Skinner *et al.* (1999) found developed watersheds had greater concentrations of toxic effluents than less developed areas with more open space. The decrease in water quality can have profound impacts on native amphibians and other wetland vertebrates. Richter and Azous (1997) observed that wetlands adjacent to undeveloped upland areas were more likely to have richer populations of native amphibians. Mensing *et al.* (1998) found that amphibian abundance was negatively influenced by land use at small scales (*e.g.*, within 0.5 to 1.0 km (0.30 to 0.60 mi).

Habitat fragmentation, wetland conversions, and hydrological alterations cumulatively result in changes in wetland species composition, including amphibian composition. Amphibian declines can be attributed to increasing numbers of nonnative competitors and predators capable of thriving in disturbed conditions (Harris 1998). Onorato *et al.* (1998) found native fish species were sensitive to anthropogenic disturbances and were becoming less abundant within the study area. They also found introduced generalists able to tolerate lower quality habitat and to replace native fish species within the system. This scenario has been demonstrated in Santa Clara Valley, California, where the loss of California red-legged frog populations was attributed in part to the invasion of bullfrogs into urbanized areas (H.T. Harvey and Associates 1997).

Climate

California red-legged frogs are adapted to survive in a Mediterranean climate where habitat quality varies spatially and temporally. Due to this variability, population sizes can vary widely from year to year. During favorable years, California red-legged frogs can experience extremely high rates of reproduction and produce large numbers of dispersing young, resulting in an increase in the number of occupied sites. In contrast, frogs may temporarily disappear from an area during periods of extended drought. Therefore, it is important for the long-term survival and recovery of the species to protect those sites that appear to be unoccupied, but can be recolonized by dispersing individuals from nearby subpopulations (Semlitsch 2000).

Habitat

California red-legged frogs use a variety of habitat types, including various aquatic, riparian, and upland habitats. They include, but are not limited to, ephemeral ponds, intermittent streams, seasonal wetlands, springs, seeps, permanent ponds, perennial creeks, manmade aquatic features, marshes, dune ponds, lagoons, riparian corridors, blackberry (*Rubus* sp.) thickets, nonnative annual grasslands, and oak savannas. Among the variety of habitats where California red-legged frogs have been found, the only common factor is association with a permanent water source. Apparently, California red-legged frogs can use virtually any aquatic system, provided a permanent water source, ideally free of nonnative predators, is nearby. Permanent water sources can include, but are not limited to, ponds, perennial creeks (or permanent plunge pools within intermittent creeks), seeps, and natural and artificial springs. California red-legged frogs may complete their entire life cycle in a particular area (*i.e.*, a pond that is suitable for all life stages) or utilize multiple habitat types. These variable life-history characteristics enable California red-legged frogs to change habitat use in response to

varying conditions. During a period of abundant rainfall, the entire landscape may become suitable habitat. Conversely, habitat use may be drastically confined during periods of prolonged drought.

Populations of California red-legged frogs are most likely to persist where multiple breeding areas are within an assemblage of habitats used for dispersal (N. Scott and G. Rathbun in litt. USGS, BRD, 1998), a trait typical of many frog and toad species (Laan and Verboom 1990; Reh and Seitz 1990; Mann et al. 1991; Sjogren-Gulve 1994; Griffiths 1997; Marsh et al. 1999). Breeding sites have been documented in a variety of aquatic habitats. Larvae, juveniles, and adult frogs have been observed inhabiting streams, creeks, ponds, marshes, sag ponds, deep pools, and backwaters within streams and creeks, dune ponds, lagoons, estuaries, and artificial impoundments, such as stock ponds. Furthermore, breeding has been documented in these habitat types irrespective of vegetation cover. Frogs successfully breed in artificial ponds with little or no emergent vegetation (S. Bobzien in litt. 2000), and have been observed to successfully breed and inhabit stream reaches that are not cloaked in riparian vegetation (Bobzien et al. 2000). The importance of riparian vegetation for this subspecies is not well understood. It is believed that riparian plant communities provide good foraging habitat due to the moisture and camouflage that occur within the community, as well as providing areas for dispersal and supporting pools and backwater aquatic areas for breeding. However, other factors are more likely to influence the suitability of aquatic breeding sites, such as the general lack of introduced aquatic predators.

California red-legged frogs often disperse from their breeding habitat to utilize various aquatic, riparian, and upland estivation habitats in the summer; however, it is also common for individuals to remain in the breeding area on a year-round basis. Frogs use a number of habitat features, including ponds, streams, marshes, boulders or rocks, organic debris such as downed trees or logs, industrial debris, and agricultural features such as drains, watering troughs, or spring boxes. When riparian habitat is present, frogs spend considerable time resting and feeding in the vegetation (G. Rathbun in litt. 2000). When riparian habitat is absent, frogs spend considerable time resting and feeding under rocks and ledges, both in and out of water (Trish Tatarian, Sonoma State University, Sonoma County in litt. 2000). California red-legged frogs can also use small mammal burrows and moist leaf litter (Jennings and Hayes 1994). Stream channels with portions narrower and deeper than 46 centimeters (cm) (18 in) may also provide habitat (61 FR 25813). This type of dispersal and habitat use is not observed in all California red-legged frogs, however, and is likely dependent on the year-to-year variations in climate and habitat suitability and varying requirements of each life stage.

Dispersal

At any time of the year, adult California red-legged frogs may move from breeding sites. They can be encountered living within streams at distances exceeding 2.9 km (1.8 mi) from the breeding site and have been found farther than 100 m (328 ft) from water in adjacent dense riparian vegetation. The California red-legged frog has been observed inhabiting riparian areas for up to 77 days (J. Bulger et al., USGS, BRD, in litt. 2000), but typically remains within 60 m (200 ft) of water. During periods of wet weather, starting with the first rains of fall, some individuals may make overland excursions through upland habitats. Most of these overland movements occur at night. Evidence from marked adult frogs on the San Simeon coast of San Luis Obispo County, California, suggests that frog movements of about 1.6 km (1 mi), over upland habitats, are possible over the course of a wet season (N. Scott and G. Rathbun, in litt. 1998). Frogs will make long-distance, straight-line, point-to-point movements rather than using corridors for moving between habitats (N. Scott and G. Rathbun, *in litt.* 1998). Dispersing adult frogs in northern Santa Cruz County traveled distances from 0.4 km (0.25 mi) to more than 3.2 km (2 mi) without apparent regard to topography, vegetation type, or riparian corridors (J. Bulger, in litt. 2000). Many newly metamorphosed juveniles tend to disperse short distances initially from July through September, and then move farther away from the breeding habitat during warm rain events (Monk 1997a; M. Jennings in litt. 2000; N. Scott in litt. 2000; Brian Mori in litt. 2000). Bobzien et al. (2000) observed juveniles inhabiting a wide variety of habitats while adults primarily inhabited deep pools; and they postulated that juveniles might segregate themselves away from adults to escape predation and competition.

The dispersal capabilities of juveniles have not been studied, but are likely dependent upon rainfall and moisture levels during and immediately following dispersal events and on habitat availability and environmental variability. There is anecdotal evidence that juvenile red-legged frogs disperse at least 1 km (0.6 mi) away from breeding habitat. These data are the result of consulting biologists conducting surveys for California tiger salamanders (*Ambystoma californiense*) in eastern Alameda (Monk and Associates 1997a and 1997b) and Santa Clara Counties (B. Mori, in litt. 2000). In both locations, newly metamorphosed California red-legged frogs were found dispersing away from breeding habitat during rain events. The ability of juveniles and adults to disperse is important for the long-term survival and recovery of the subspecies because the dispersing individuals can recolonize areas subjected to localized extirpation.

The manner in which nondispersing California red-legged frogs use upland habitats is not well understood. The length of time California red-legged frogs spend in upland habitats, patterns of use, and whether juveniles, subadults, and adults use uplands differently are under study. Preliminary data from San Simeon and Pico creeks in central California indicated that the number of days when California red-legged frogs were found more than 2.0 m (7 ft) from water ranged from 0 to 56 days (G. Rathbun, in litt. 2000), while the majority of California red-legged frogs observed in eastern Contra Costa County spent the entire wet season within streamside habitat (T. Tatarian, in litt. 2000). However, several frogs have been documented moving away from the streamside habitat for varying periods (T. Tatarian, pers. comm. 2001).

The healthiest California red-legged frog populations persist as a collection of subpopulations that exchange genetic information through individual dispersal events. These populations persist and flourish where suitable breeding and nonbreeding habitats are interspersed throughout the landscape and are interconnected by unfragmented dispersal habitat. Where this habitat mosaic exists, local extirpations may be counterbalanced by the colonization of new habitat or recolonization of unoccupied areas of suitable habitat. Studies on other frogs and toads have demonstrated that the probability of a habitat being occupied is positively correlated with the distance to the nearest currently occupied habitat patch (Laan and Verboom 1990; Mann *et al.* 1991; Marsh *et al.* 1999). Isolated patches far removed from occupied patches eventually became extirpated (Sjogren-Gulve 1994). In addition to distance between habitat patches, the fragmentation of dispersal routes can also result in the isolation of subpopulations. Studies from other

anuran species have shown that fragmentation has resulted in problems associated with inbreeding (Reh and Seitz 1990; Hitchings and Beebee 1997) and an increase in unoccupied suitable habitat, and can ultimately result in extinction (Sjogren-Gulve 1994).

The long-term probability of the survival and recovery of California red-legged frogs is dependent upon the protection of existing breeding habitat, the movements of individuals between aquatic patches, and the ability to recolonize newly created or vacated habitats. Recolonization, which is vital to the recovery of this subspecies, is dependent upon landscape characteristics including the distance between patches, the number and severity of barriers between patches, and the presence of interconnecting elements (*e.g.*, habitat where frogs can rehydrate), and upon the dispersal capability of California red-legged frogs (Laan and Verboom 1990).

Since the publication of our last designation of critical habitat for the California red-legged frog on March 13, 2001 (66 FR 14626), two new populations of the subspecies have been documented. However, due to limited access to these populations since they occur on private property and the limited information we have concerning their status, we have not been able to make a determination at this time as to whether they are essential to the conservation of the subspecies. We specifically seek information concerning these two new populations to assist us in making that determination. If, upon receipt of additional data and further analysis, we determine these populations to be essential to the conservation of the subspecies, it would be our intention to include them in final critical habitat.

The first population was discovered on private property in the South Fork Yuba River watershed in Nevada County, California, in 2002. This presence of this population was subsequently confirmed by Sacramento Fish and Wildlife staff in 2003. During the site visit, California red-legged frog tadpoles were observed suggesting the presence of a breeding population. Further, during this site visit, there was no specific evidence visible of invasive or predatory species on site. The California red-legged frogs on this site occur in artificial ponds, but they are not active stock ponds. Because this population is located on private land, we have not had the opportunity to study it. Consequently, we are not able to make any specific conclusions regarding the status of this population of the subspecies at this locale.

A second population of California red-legged frogs was discovered on private land in Youngs Creek, Calaveras County, California, in 2003. The population was subsequently confirmed, but due to limited access, we have not been able to determine the extent of this population. Youngs Creek is a tributary of Cosgove Creek, a tributary to Calaveras River; however, during the site visits, there was no specific evidence visible of invasive or predatory species bullfrogs are known to occur in ponds on adjacent property.

Previous Federal Action

On February 2, 1994, we published a proposal to list the frog as an endangered species (59 FR 4888). Based on information provided during the public comment period, we subsequently published a final rule listing the California red-legged frog as threatened on May 23, 1996 (61 FR 25813). At the time of the final listing, we determined that designating critical habitat was not prudent due to the potential increased degree of threat from the publication of specific localities. This specific information would make the species more vulnerable to vandalism and also to collection for market consumption. Consequently, we did not designate critical habitat for the subspecies.

On March 24, 1999, the Earthjustice Legal Defense Fund, on behalf of the Jumping Frog Research Institute, the Southwest Center for Biological Diversity, and the Center for Sierra Nevada Conservation, filed a lawsuit in the Northern District of California on our failure to designate critical habitat for the California red-legged frog.

On December 15, 1999, the court ordered us to make a prudency determination by August 31, 2000, and issue a final rule by December 29, 2001. On January 18, 2000, the court clarified an error in the December 15, 1999, order stating that the Service shall issue a final rule by December 29, 2000. On August 22, 2000, we submitted a declaration requesting an extension of the court order to March 1, 2001, citing the need to extend the comment period. On September 11, 2000, we published a proposed rule to designate approximately 2,175,000 ha (5,373,650 ac) as critical habitat for the California red-legged frog (65 FR 54891) in California. The comment period was open until October 11, 2000. During this comment period, four public hearings were held in Ventura (September 19, 2000), San Luis Obispo (September 21, 2000), Dublin (September 26, 2000), and Sacramento (September 28, 2000). On December 21, 2000, we published a notice (65 FR 80409) announcing the reopening of the comment period on the proposal to designate critical habitat for the California red-legged frog and a notice of availability of the draft economic analysis on the proposed determination. The comment period was reopened until January 22, 2001. A final rule designating critical habitat for the California red-legged frog was signed on March 1, 2001, and published in the **Federal Register** on March 13, 2001 (66 FR 14626).

On June 8, 2001, the Home Builders Association of Northern California, California Chamber of Commerce, California Building Industry Association, California Alliance for Jobs, and the Building Industry Legal Defense Fund filed a lawsuit in the U.S. District Court for the District of Columbia challenging the Service's designation of critical habitat for the California red-legged frog. *Home Builders Ass'n of Northern California, et al.* v. *Norton, et al.*, Civ. No. 01–1291 (RJL) (D. D.C.). On November 6, 2002, the court entered a consent decree remanding the designation to the Service to conduct an economic analysis in accordance with the Tenth Circuit's decision in *New Mexico Cattle Growers Ass'n* v. *U.S. Fish and Wildlife Service*, 248 F.3d 1277 (10th Cir. 2001). The consent decree vacated the critical habitat designation for the California red-legged frog with the exception of Units 5 and 31, Units not known to be occupied by the frog, and ordered the Service to promulgate a proposed revised designation by March 2004, and a final revised rule by November 2005. This proposed rule is published in accordance with the November 6, 2002, consent decree.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat 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 or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve,

preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic, national security, 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 within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271) and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations of a listed species, but are outside the designation of critical habitat for it, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In identifying areas that are essential to conserve the California red-legged frog, we used the best scientific and commercial data available. These included data from research and survey observations published in peer-reviewed articles, recovery criteria and strategy outlined in the Recovery Plan (Service 2002), regional Geographic Information System (GIS) watershed and species coverages, data compiled in the California Natural Diversity Database (CNDDB), data and analysis used to develop regional Habitat Conservation Plans (HCPs), and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. In the development of this proposal, we also took into consideration any information provided to us during the public comment periods on our previous proposed critical habitat designation (65 FR 54891, September 11, 2000) and draft economic analysis of our proposed critical habitat (65 FR 80409, December 21, 2000).

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 designate as critical habitat, we are required to 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 and protection. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected protection from disturbance or are representative of the historic geographical and ecological distributions of a species.

Due to the complex life history and dispersal capabilities of the California red-legged frog, and the dynamic nature of the environments in which they are found, the primary constituent elements described below are found throughout the watersheds that are being designated as critical habitat. Special management, such as habitat rehabilitation efforts (*e.g.*, removal of nonnative predators),

may be necessary throughout the area being proposed for designation. Critical habitat for California red-legged frogs will provide for breeding and nonbreeding habitat and for dispersal between these habitats, as well as allowing for expansion of frog populations, which is essential to the conservation of the subspecies.

Critical habitat includes: (a) Essential aquatic habitat; (b) associated uplands; and (c) dispersal habitat connecting essential aquatic habitat.

Breeding and Foraging Habitat

Aquatic habitat is essential for providing space, food, and cover, necessary to sustain all life stages of California red-legged frogs. It consists of virtually all low-gradient fresh water bodies, including natural and man-made (*e.g.*, stock) ponds, backwaters within streams and creeks, marshes, lagoons, and dune ponds, except for deep lacustrine water habitat (*e.g.*, deep lakes and reservoirs 20 ha (50 ac) or larger in size) inhabited by nonnative predators. The subspecies requires a permanent water source to ensure that aquatic habitat is available year round. Permanent water sources can include, but are not limited to, ponds, perennial creeks (or permanent plunge pools within intermittent creeks), seeps, and springs. Aquatic habitat used for breeding must have a minimum deep water depth of 0.5 m (20 in) and maintain water during the entire tadpole rearing season (at least March through July). During periods of drought, or less-than-average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but these sites would still be considered essential breeding habitat in wetter years. Ponds that support a small population of California red-legged frogs, but are not surrounded by suitable upland habitat, or are cut off from other breeding ponds or permanent water sources by impassable dispersal barriers, do not have the primary constituent elements for California red-legged frog critical habitat.

To be a primary constituent element for California red-legged frog critical habitat, the aquatic components must consist of two or more breeding sites located within 2 km (1.25 mi) of each other; at least one of the breeding sites must also be a permanent water source. Also, the aquatic component can consist of two or more seasonal breeding sites with a permanent nonbreeding water source located within 2 km (1.25 mi) of each breeding site. California red-legged frogs have been documented to travel 3.6 km (2.25 mi) in a virtual straight-line migration from nonbreeding to breeding habitats (J. Bulger, in litt. 2000). We believe that this is likely the upward limit of dispersal capability and that the 2-km (1.25-mi) dispersal element will ensure that connectivity between breeding habitats will be maintained within areas designated as critical habitat. In addition, breeding sites must be connected by essential dispersal habitat, described below.

Associated Upland Habitat For Forage, Shelter, Water Quality Maintenance

Associated upland and riparian habitat is essential to maintain California red-legged frog populations associated with essential aquatic habitat. The associated uplands and riparian habitat provide food and shelter sites for California red-legged frogs and assist in maintaining the integrity of aquatic sites by protecting them from disturbance and supporting the normal functions of the aquatic habitat. The palustrine or emergent aquatic habitat is often characterized by presence of cattail (*Typha* spp.), bulrush (*Scirpus* spp.), and other persistent emergent vegetation that allows for shelter, forage, and attachment of egg masses, while the associated adjacent upland habitat often contains blackberry (*Rubus* sp.) and other upland perennial species that provide for shelter from predatory species and forage habitat (Service 2002).

Key conditions include the timing, duration, and extent of water moving within the system, filtering capacity, and maintaining the habitat to favor California red-legged frogs and discourage the colonization of nonnative species such as bullfrogs. Essential upland habitat consists of all upland areas within 90 m (300 ft) of the edge of the ordinary high-water mark, or no further than the watershed boundary. This is based, in part, on the work of J. Bulger *et al.* (in litt. 2000), who found that frogs were capable of inhabiting upland habitats within 60 m (200 feet) of aquatic habitat for continuous durations exceeding 20 days, and G. Rathbun (in litt. 2000), who observed frogs inhabiting riparian habitat for durations exceeding 30 days.

Dispersal Habitat

Essential dispersal habitat provides connectivity among California red-legged frog breeding habitat (and associated upland) patches. While frogs can pass many obstacles, and do not require a particular type of habitat for dispersal, the habitat connecting essential breeding locations and other aquatic habitat must be free of barriers (*e.g.*, a physical or biological feature that prevents frogs from dispersing beyond the feature) and at least 90 m (300 ft) wide. Essential dispersal habitat consists of all upland and wetland habitat free of barriers that connects two or more patches of essential breeding habitat within 2 km (1.25 mi) of one another. Dispersal barriers include heavily traveled roads (an average of 30 cars per hour from 10 p.m. to 4 a.m.) that possess no bridges or culverts; moderate to high density urban or industrial developments; and large reservoirs over 20 ha (50 ac) in size. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to California red-legged frog dispersal.

In summary, the primary constituent elements for the California red-legged frog consist of three components:

(1) Aquatic habitat with a permanent water source with pools (*i.e.*, water bodies) having a minimum depth of 0.5 m (20 in) for breeding and which can maintain water during the entire tadpole rearing season;

(2) Upland areas up to 90 m (300 ft) from the water's edge associated with the above aquatic habitat that will provide for shelter, forage, maintenance of the water quality of the aquatic habitat, and dispersal; and

(3) Upland barrier-free dispersal habitat that is at least 90 m (300 ft) in width that connect at least two (or more) suitable breeding locations defined by the aquatic habitat above, all within 2 km (1.25 miles) of one another.

Criteria Used To Identify Critical Habitat

We considered several criteria in the selection and proposal of specific boundaries for California red-legged frog critical habitat. These criteria, which follow the recovery strategy outlined in the final Recovery Plan (Service 2002), focused on designating units (1) Throughout the geographic and elevational range of the subspecies; (2) that would result in protecting populations that are geographically distributed in a manner that allows for the continued existence of viable and essential metapopulations despite fluctuations in the status of subpopulations; and (3) that possess large continuous blocks of occupied habitat, representing source populations and/or unique ecological characteristics, or areas where the re-establishment of California red-legged frogs is essential to the recovery of the subspecies (Service 2002). We first determined the occupancy status of areas. Areas were considered to possess extant populations if California red-legged frogs have been documented in that area since 1985. We then selected areas that

are inhabited by populations (source populations) that are capable of maintaining their current population levels and capable of providing individuals to recruit into subpopulations found in adjacent areas. We also selected several areas that may lack source populations, but which have other unique ecological significance, with the goal of maintaining the full range of the genetic variability and evolutionary adaptation in the subspecies. These include areas on the periphery of the current range and elsewhere that represent the historic distribution of the subspecies, and areas that provide connectivity among source populations or between source populations and unoccupied extirpated areas. Of the approximate 1,674,582 ha (4,140,440 ac) that are proposed for designation as critical habitat for the California red-legged frog, an estimated 81,020 ha (200,212 ac) are considered unoccupied habitat (Units 5 and 31). All of this unoccupied habitat occurs on Federal lands, and was identified in the core areas essential for California red-legged frog recovery in our final Recovery Plan (Service 2002). Both unoccupied and occupied areas not included in this designation can still be targets for recovery actions, including reestablishing populations.

The critical habitat units were delineated by first creating data layers in a geographic information system (GIS) format of all of the core areas as proposed in the final Recovery Plan (Service 2002). We then used the California Watershed Map (CALWATER version 2.2), a coverage developed by California Department of Water Resources (DWR), to identify watersheds containing core areas and delineate their boundaries in a 1:24,000 format. CALWATER is a set of watershed boundaries meeting standardized delineation criteria, consisting of six levels of increasing specificity, with the primary purpose of assigning a single, unique code to a specific watershed polygon (*e.g.*, a planning watershed). CALWATER delineates the boundaries of planning watersheds 1,200 to 4,000 ha (3,000 to 10,000 ac) in size. We used these planning watersheds as the minimum mapping unit to delineate critical habitat units because watersheds represent functional, hydrologic management units that allow for efficient evaluation of factors that affect the quality of aquatic habitat and, thus, are extremely relevant to amphibian populations. The use of planning watersheds also allowed us to delineate critical habitat that protects habitat quality, breeding and nonbreeding habitat, and dispersal habitat in a manner consistent with the overall goal of protecting and sustaining metapopulations.

We selected all of the planning watersheds that intersected areas of high California red-legged frog abundance, areas essential to maintain connectivity, and/or areas of unique ecological significance as identified by the core areas from the final Recovery Plan (Service 2002). In areas where planning watersheds were large and/or watersheds were significantly altered hydrologically, we used alternative structural, political, or topographic boundaries (*e.g.*, roads, county boundaries, elevation contour lines) as critical habitat boundaries because in these areas the benefits of using planning watersheds were limited.

Using the planning watersheds as the minimum mapping unit of this critical habitat designation would not allow us to avoid towns, other developed areas, or other areas where the primary constituent elements are not found. To address this shortcoming, we overlayed the planning watersheds with a 100-m Universal Transverse Mercator (UTM) North American Datum of 1983 (NAD 83) grid. Using information from recent digital aerial photography, we then removed NAD 83 grid cells that did not contain the primary constituent elements. Although the data available to us were not sufficiently detailed to definitively map the primary constituent elements by grid cell, this approach did allow us to remove significant urban and other developed areas, including some agricultural lands, from the final designation.

We could not depend solely on federally owned lands for critical habitat designation as these lands are limited in geographic location, size, and habitat quality within the current range of the California red-legged frog. In addition to the federally owned lands, we are designating critical habitat on non-Federal public lands and privately owned lands, including land owned by the California Department of Parks and Recreation, the California Department of Fish and Game, DWR, and the University of California, as well as regional and local park lands and water district lands. All non-Federal lands designated as critical habitat meet the definition of critical habitat under section 3 of the Act in that they are within the geographical area occupied by the subspecies, are essential to the conservation of the subspecies, and may require special management considerations or protection.

We are also proposing to designate areas that are not currently known to be occupied by the subspecies, but which are essential for its conservation. We included one area in Tuolumne County in the Sierra Nevada and one in the Tujunga watershed in Los Angeles County in the Peninsular Range of southern California. These areas, within the historic range of the subspecies with some occurrences documented as recently as the mid-1980s, are strong candidate areas for re-establishment due to preliminary positive discussions with Federal agencies and adjacent landowners, are composed entirely of large blocks of Federal land, and are identified in the final Recovery Plan (Service 2002) as important reestablishment areas essential to the recovery of the California red-legged frog. These areas also provide important connectivity among currently occupied areas. In order for future reestablishment to be successful, special management in these areas is needed, including habitat restoration and the removal of nonnative species, such as predators. However, the primary constituent elements for California red-legged frogs are present in these areas.

Without reestablishment in the Sierra Nevada and Southern California, it is probable that California red-legged frogs will be extirpated from these areas, greatly reducing the likelihood of eventual recovery of the species. As a result, we have determined that re-establishment of California red-legged frog populations in these currently unoccupied areas is essential to the conservation of the species. Since the listing of California red-legged frogs as a threatened species in 1996, no progress has been made improving habitat for this species within these unoccupied areas. Because California red-legged frogs have been extirpated from these areas, Federal agencies have determined their actions will not adversely affect California red-legged frogs and have further declined to use their authority under section 7(a)(1) to help recover the California red-legged frogs in the Sierra Nevada and southern Transverse and Peninsular Ranges. Therefore, given the lack of protection for these areas, it is important to ensure that special management actions are implemented in unoccupied lands within the Sierra Nevada by designating them as critical habitat.

Special Management Considerations or Protections

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features

essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protections. As discussed throughout this proposed rule, our previous final designation of critical habitat for the California red-legged frog (66 FR 14626, March 13, 2001) and in our final recovery plan for the species (Service 2002), the frog and its habitat are threatened by a multitude of factors including by not limited to: degradation and loss of habitat through urbanization, mining, improper management of grazing, recreation, invasion of nonnative plants, impoundments, water diversions, degraded water quality, and introduced predators, and previous overexploitation. While many of these threats operate concurrently and cumulatively with each other and with natural disturbances (*e.g.*, droughts and floods), the fragmentation of existing habitat, and the continued colonization of existing habitat by nonnative species, may represent the most significant current threats to California red-legged frogs. As such we believe that each area proposed for designation as critical habitat may require some level of management and/or protection to address the current and future threats to the California red-legged frog and habitat essential to its conservation to ensure the overall recovery of the subspecies.

Relationship to Section 4(a)(3) of the Act

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species.

The 2004 National Defense Authorization Act (Pub. L. 108–136, November 2003), Section 318 Military Readiness and Conservation of Protected Species makes the following amendment to section 4(a)(3) of the Act:

> The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat as those bases require no additional special management or protection. Further, the statutory amendment to section 4(a)(3) the Act provides guidance on the relationship of INRMPs to critical habitat. Therefore, lands essential to the conservation of a species that are owned or managed by DOD and covered by INRMPs are excluded from critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions as necessary. If all of these criteria are met, then the lands covered under the plan would be excluded from a designation of critical habitat for the species.

Vandenberg Air Force Base completed an INRMP in 1997 prior to the passage and implementation of the Sikes Act Improvements Act of 1997. While we did not specifically participate in its development, this older plan does provide conservation measures for the California red-legged frog, as well as for the management of important wetland habitats across the base. The INRMP provides management direction on conserving listed and imperiled species and their habitats on the base. Known frog sites are protected from disturbance from human activities and grazing through measures appropriate to the given situation. Vandenberg's INRMP specifies monitoring of California red-legged frog populations on the base, and periodic surveys to provide continuous evaluation of the subspecies' status at known and new sites identified on the base. In addition, Vandenberg actively consults with us on all actions that may affect California red-legged frogs on the base, and has implemented conservation measures as recommended. Therefore, we have determined that Vandenberg Air Force Base that the INRMP as drafted and implemented provides a conservation benefit to the California red-legged frog. As such, the lands essential to the conservation of the California red-legged frog on Vandenberg Air Force Base have been excluded from this proposed designation of critical habitat for the subspecies.

The Camp Parks U.S. Army Reserve Training Area completed an INRMP in 2003 and a biological opinion was issued in July of 2003. The INRMP does provide conservation measures for the California red-legged frog and provides management direction on conserving listed and imperiled species and their habitats on the base. In addition, Camp Parks actively consults with us on all actions that may affect California red-legged frogs on the base, and has implemented conservation measures as recommended. Therefore, we have determined that the INRMP as drafted and implemented provides a conservation benefit to the California red-legged frog. As such, the lands essential to the conservation of the California red-legged frog on Camp Parks have been excluded from this proposed designation of critical habitat for the subspecies. Camp Parks has worked with us and developed an Endangered Species Management Plan (ESMP) as an appendix to their INRMP. The ESMP was drafted specifically for California red-legged frogs and includes nonnative predator control and other conservation measures that would benefit the frog. Camp Parks has already implemented several portions of the ESMP and had done so even prior to the final approval of the INRMP.

Relationship to Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, the effect on national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, the effect on national

security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations, we have used both the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of these sections of the Act to lands essential to the conservation of the subject species to evaluate and either exclude them from final critical habitat or not include them in proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species, and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; (5) Fish and Wildlife Service Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

Exclusions of Military Lands Pursuant to Section 4(b)(2) of the Act

Although Camp San Luis Obispo (CSLO) completed their INRMP in November 2001, they are now updating it to include an additional species, and we are in process of evaluating it to determine if it adequately covers and provides a conservation benefit to the California red-legged frog. CSLO contains habitat essential to the conservation of the California red-legged frog. The proposed critical habitat encompasses more than 90 percent of CSLO. Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species, in this case, the California red-legged frog.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that activities in such habitat that may affect critical habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. In the absence of designated critical habitat, this consultation will not look specifically at the issue of adverse modification of critical habitat; however, it will look at the very similar concept of jeopardy to the listed species. Our experience is that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define "jeopardize the continued existence of'' and "destruction or adverse modification of'' in virtually identical terms. Jeopardize the continued existence of means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification means an Aalteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

We have determined that the benefits of designating critical habitat on CSLO are small. The primary benefit of designation is the prohibition on destruction or adverse modification of critical habitat under section 7 of the Act. However, all frog habitat on CSLO is occupied, and we believe that section 7 consultation on any proposed action on these bases that would result in an adverse modification conclusion would also result in a jeopardy conclusion. As noted above, we expect that, when completed and adopted, the updated INRMPs will provide equal or greater protection to California red-legged frog habitat on the bases than a critical habitat designation.

(2) Benefits of Exclusion

CSLO is a training facilities managed by the California Army Reserve National Guard (CA ARNG) and the U.S. Army (Army), respectively. Their mission is to provide a major training area for National Guard and U.S. Army Reserve troops for overseas deployment, and to protect public safety during emergency disasters. During the public comment period for the proposal for the previous designation of critical habitat for the California red-legged frog, CSLO concluded that the designation, if it were to become final, would seriously limit their ability to conduct their critical training activities. They conclude that a final designation that includes these installations would likely result in delays in training and closure of areas to allow for reinitiation of section 7 consultation on critical habitat. They asserted that the designation of critical habitat for the California red-legged frog on their facilities will have a detrimental effect on the ability of the CA ARNG and Army to meet their training mission and potentially affect national security.

Even though the lands on these bases currently meet the definition of critical habitat for the California red-legged frog, we have determined that it is appropriate to exclude CSLO from this critical habitat designation under section 4(b)(2) of the Act in the interest of national security. The primary benefit of excluding CSLO is to ensure that their mission-critical military training activities can continue without interruption while the INRMPs are being completed. CSLO is in the process of updating their draft INRMP. We fully expect that, once the INRMP is completed and approved, areas of the base included in the proposed critical habitat designation will no longer meet the definition of critical habitat, as they will require no additional special management or protection.

Training activities are ongoing, and the CA ARNG and Army believe that by implementing specific conservation measures, their training activities are not likely to adversely affect California red-legged frogs on the bases, ensuring compliance with section 7(d) of the Act. In particular, CSLO considers all permanent and intermittent waterways and riparian areas to be sensitive habitat and provides buffers. Sections of Chorro Creek, and several ponds, springs, and reservoirs have been fenced to exclude military training activities and cattle grazing. Although avoiding these areas constrains training activities to some

degree, the effectiveness of their overall mission is not compromised. Camp Parks has also identified essential California red-legged frog habitat and has designated these areas as sensitive habitat areas. Further, Camp Parks is currently implementing measures to promote the conservation of California red-legged frogs by implementing control of non-native predators.

The proposed critical habitat designation included about 90 percent of CSLO. If these areas are included in the final designation of critical habitat for the California red-legged frog, the CA ARNG and U.S. Army would be compelled by their interpretation of the Act to significantly curtail necessary training within the area designated as critical habitat, to the detriment of mission-critical training capability and potentially national security, until the reinitiation of consultation is concluded. As a result, this would greatly restrict use of the installation, severely limiting CSLO's utility as training sites.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Through the development of this proposal, we have identified lands that we believe to be essential to the conservation of the California red-legged frog. We have considered these lands in relation to lands owned and managed by DOD that are used for mission-critical training. Based on our analysis above and our analysis and treatment of these lands in our previous designation of critical habitat for the California red-legged frog, we have determined that the benefits of excluding these lands from critical habitat pursuant to the potential effects on national security as allowed under section 4(b)(2) of the Act outweigh the potential benefits of including these lands in the proposed designation. Further, we have determined that excluding the bases will not result in the extinction of the red-legged frog, as numerous frog core areas remain within the final critical habitat designation and sections 7(a)(2) and 9 of the Act still apply to the activities affecting red-legged frogs on CSLO.

Should additional information become available that changes our analysis of the benefits of excluding any of these areas compared to the benefits of including them in the critical habitat designation, we may revise this final designation accordingly. Maps delineating essential habitat for the California red-legged frog, overlaid with "mission-critical'' training areas on CSLO, are available for public review and comment at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://sacramento.fws.gov/es/documents.* These maps are provided to allow the public the opportunity to adequately comment on these exclusions.

Relationship of Critical Habitat to the San Joaquin County Multi-Species/Open Space Habitat Conservation Plan (San Joaquin County MSHCP)

The San Joaquin County MSHCP was developed and a finalized EIR/EIS completed in November 2000. A non-jeopardy biological opinion was issued on the plan in May 2001. Participants in this HCP include seven cities and the County of San Joaquin. The San Joaquin MSHCP encompasses all of San Joaquin County except for federally-owned lands at the Lawrence Livermore Laboratory and some areas encompassing projects not covered by the San Joaquin County MSHCP (Tracy Hills, The American River Water Resources Investigation Project, Folsom South Canal Connection of the East Bay Municipal Utility District Supplemental Water Supply Program, and the South County Surface Water Supply Project). The San Joaquin County MSHCP is also a subregional plan under the State's NCCP and was developed in cooperation with the California Department of Fish and Game. Approximately 100,841 ac (40,808 ha) of covered species habitat are proposed for conservation.

We are proposing to exclude a portion of Unit 15 from proposed critical habitat for the California red-legged frog pursuant to section 4(b)(2) of the Act because it is within the planning area boundary for the San Joaquin County MSHCP. Our analysis for excluding portions of Unit 15 from proposed critical habitat is outlined below. The San Joaquin County Multi-Species Conservation Plan (SJMSCP) identifies the California red-legged frog as a covered species and has identified areas where growth and development are expected to occur (build-out areas). Only one percent of the area considered habitat for the California red-legged frog would be affected by development activities.

Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved HCPs are small. Where HCPs are in place that include coverage for the California red-legged frog, the HCPs and their IAs include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. The San Joaquin County MSHCP seeks to accomplish these goals for the California red-legged frog through the implementation of specific conservation objectives. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. In the case of the San Joaquin County MSHCP, we must evaluate the impact of the plan on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act.

Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in additional regulations requiring more of the participants than other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By preemptively

excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act. HCP and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP "No Surprises'' regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations, which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated HCPs and NCCP/HCPs currently approved and implemented within the areas being proposed as critical habitat for the California red-legged frog. Based on this evaluation, we find that the benefits of exclusion of the lands essential to the conservation of the California red-legged frog in the planning area for the San Joaquin County MSHCP outweigh the benefits of proposing portions of Unit 15 as critical habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the HCP and NCCP/HCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species are still accomplished from material provided on our website and through public notice and comment procedures required to establish an HCP or NCCP/HCP. The public has also been informed through the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, we believe that proposing critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being proposed. We do not believe that this exclusion would result in the extinction of the species.

Should additional information become available that changes our analysis of the benefits of excluding any of these areas compared to the benefits of including them in the critical habitat designation, we may revise this final designation accordingly. Maps delineating essential habitat for the California red-legged frog, overlaid with the planning area for the San Joaquin County MSHCP, are available for public review and comment at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://sacramento.fws.gov*. These maps are provided to allow the public the opportunity to adequately comment on these exclusions.

Relationship of Critical Habitat to the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

The Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) has been in development for several years. Participants in this HCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; the California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside MSHCP is also being proposed as a subregional plan under the State's NCCP and is being developed in cooperation with the California Department of Fish and Game. Within the 1.26 million-acre (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will complement other existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, Forest Service, and County Park Lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local bond measure to fund the acquisition of land in support of the MSHCP. On November 14, 2002, a Notice of Availability of a Draft Environmental Impact Report (EIS/EIR) and Receipt of and Application for an Incidental Take Permit was published in the **Federal Register**. Public comment on these documents was accepted until January 14, 2003. Subsequently, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

The Western Riverside MSHCP indicates that conservation actions within their planning area will be implemented such that the long-term conservation of the Riverside fairy shrimp will be addressed. Although the MSHCP is not yet completed and implemented, significant progress has been achieved in the development of this HCP, including the preparation of the EIS/EIR, the solicitation of public review and comment, and the initiation of a consultation with us on the issuance of incidental take permits for those species identified for coverage within the draft plan.

We are excluding a portion of Unit 30 from proposed critical habitat for the California red-legged frog pursuant to section 4(b)(2) of the Act because it is within the planning area boundary for the proposed Western Riverside MSHCP. Our analysis for excluding the portion of Unit 30 within the planning area boundary for the Western Riverside MSHCP from proposed critical habitat is outlined below.

Benefits of Inclusion

As stated previously, the benefits of designating critical habitat on lands within the boundaries of approved HCPs are small. Where HCPs are in place that include coverage for the California red-legged frog, the HCPs and their IAs include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. The Western Riverside MSHCP seeks to accomplish these goals for the California red-legged frog through the implementation of specific conservation objectives. The principal benefit of designating critical habitat is that federally authorized or funded

activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. In the case of the proposed Western Riverside MSHCP, we must evaluate the impact of the plan on the species for which the participants are seeking incidental take permits, pursuant to section 7 of the Act.

Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in additional regulations requiring more of them than other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants including states, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act. HCP and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP "No Surprises'' regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated HCPs and NCCP/HCPs currently approved and implemented within the areas being proposed as critical habitat for the California red-legged frog. Based on this evaluation, we find that the benefits of exclusion the lands essential to the conservation of the California red-legged frog in the planning area for the proposed and pending Western Riverside MSHCP outweigh the benefits of proposing portions of Unit 30 as critical habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the HCP and NCCP/HCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species is still accomplished from material provided on our website and through public notice and comment procedures required to establish a HCP or NCCP/HCP. The public has also been informed through the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, we believe that proposing critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being proposed. We do not believe that this exclusion would result in the extinction of the species.

In the event that the Western Riverside MSHCP is not found to benefit the California red-legged frog and the coverage for this species is not granted, we will include the areas essential to the conservation of the California red-legged frog in Unit 30 in the final designation of Critical Habitat.

Maps delineating essential habitat for the California red-legged frog, overlaid with the planning area for the Western Riverside MSHCP are available for public review and comment at the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://sacramento.fws.gov/es/documents*. These maps are provided to allow the public the opportunity to adequately comment on these exclusions.

Critical Habitat Designation

The areas we are proposing as critical habitat currently provide all of those habitat components necessary to meet the primary biological needs of the California red-legged frog, as described in the final Recovery Plan (Service 2002), and defined by the primary constituent elements. We did not include all areas currently occupied by California red-legged frogs, only areas possessing large populations, representing unique ecological characteristics, or representing historic geographic area where California red-legged frogs can be re-established.

In selecting areas of critical habitat, we made an effort to avoid developed areas, such as towns and other similar lands that are not likely to contribute to California red-legged frog conservation. However, the minimum mapping unit that we used to approximate our delineation of critical habitat for California red-legged frogs did not allow us to exclude all developed areas such as roads and rural developed areas or other lands. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, other paved areas, lawns, and other urban landscaped areas, and uplands removed from essential aquatic and dispersal habitat, are not likely to contain the primary

constituent elements essential for the conservation of the California red-legged frog. Therefore, Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Table 1 shows the approximate area of proposed critical habitat by county and land ownership. Proposed critical habitat for the California red-legged frog includes approximately 1,674,582 ha (4,140,440 ac) in Alameda, Butte, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Napa, Plumas, Riverside, San Benito, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, and Ventura Counties, California. These total numbers also include the specific areas excluded as discussed above. A brief description of each proposed critical habitat unit is given below.

TABLE 1.—APPROXIMATE AREA ENCOMPASSING PROPOSED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

County	Federal land	Local/state land	Private land	Total
Plumas	22,904 ha (56,598 ac)	NA	2,458 ha (6,074 ac)	25,362 ha (62,672 ac)
Butte	15,115 ha (37,350 ac)	135 ha (335 ac)	6,305 ha (15,582 ac)	21,555 ha (53,267 ac)
El Dorado	8,624 ha (21,312 ac)	10 ha (26 ac)	15,456 ha (38,193 ac)	24,090 ha (59,531 ac)
Tuolumne	49,054 ha (121,216 ac)	NA	NA	49,054 ha (121,216 ac)
Mariposa	1,262 ha (3,120 ac)	NA	NA	1,262 ha (3,120 ac)
Tehama	2,727 ha (6,740 ac)	NA	12,771 ha (31,560 ac)	15,498 ha (38,300 ac)
Napa	2,151 ha (5,317 ac)	758 ha (1,874 ac)	20,056 ha (49,562 ac)	22,965 ha (56,753 ac)
Sonoma	NA	819 ha (2,025 ac)	7,154 ha (17,678 ac)	7,973 ha (19,703 ac)
Solano	826 ha (2,042 ac)	67 ha (168 ac)	9,765 ha (24,130 ac)	10,658 ha (26,340 ac)
Marin	30,247 ha (74,742 ac)	4,846 ha (11,976 ac)	45,649 ha (112,802 ac)	80,742 ha (199,520 ac)
Alameda	337 ha (833 ac)	1,853 ha (4,581 ac)	95,404 ha (235,750 ac)	97,594 ha (241,164 ac)
Contra Costa	47 ha (117 ac)	7,618 ha (18,826 ac)	47,676 ha (117,810 ac)	55,341 ha (136,753 ac)
Santa Clara	2,298 ha (5,678 ac)	15,563 ha (38,459 ac)	69,941 ha (172,828 ac)	87,802 ha (216,966 ac)
San Joaquin	NA	38 ha (96 ac)	11,386 ha (28,136 ac)	11,424 ha (28,232 ac)
Stanislaus	27 ha (67 ac)	10,809 ha (26,711 ac)	5,824 ha (14,392 ac)	16,660 ha (41,170 ac)
Merced	1,010 ha (2,496 ac)	2,627 ha (6,493 ac)	66,880 ha (165,266 ac)	70,517 ha (174,255 ac)
Fresno	6,807 ha (16,822 ac)	NA	3,058 ha (7,557 ac)	9,865 ha (24,379 ac)
San Benito	11,826 ha (29,224	NA	102,340 ha (252,888	114,166 ha (282,112 ac)
San Mateo	418 ha (1,033 ac)	9,785 ha (24,180 ac)	67,711 ha (167,319	77,914 ha (192,532 ac)
Santa Cruz	137 ha (340 ac)	10,059 ha (24,858 ac)	32,773 ha (80,985 ac)	42,969 ha (106,183 ac)
Monterey	18,604 ha (45,972 ac)	1,487 ha (3,675 ac)	135,419 ha (334,629 ac)	155,510 ha (384,276 ac)
San Luis Obispo	11,010 ha (27,208 ac)	2,050 ha (5,068 ac)	203,916 ha (503,889 ac)	216,976 ha (536,165 ac)
Kern	473 ha (1,171 ac)	NA	12,148 ha (30,021 ac)	12,621 ha (31,192 ac)
Santa Barbara	79,365 ha (196,117 ac)	1,134 ha (2,804 ac)	123,083 ha (304,147 ac)	203,582 ha (503,068 ac)
Ventura	104,547 ha (258,343 ac)	NA	6,458 ha (15,959 ac)	111,005 ha (274,302 ac)
Los Angeles	76,927 ha (190,091 ac)	4,961 ha (12,261 ac)	26,269 ha (64,914 ac)	108,157 ha (267,266 ac)
Riverside	11,829 ha (29,232 ac)	NA	6,784 ha (16,764 ac)	18,613 ha (45,996 ac)
San Diego	4,296 ha (10,616 ac)	NA	410 ha (1,015 ac)	4,706 ha (11,631 ac)
Total	463,438 ha (1,145,211 ac)	74,949 ha (185,229 ac)	1,147,070 ha (2,834,503 ac)	1,674,582 ha (4,138,064 ac)

Unit 1. North Fork Feather Unit

Unit 1 consists of drainages found within the North Fork Feather River drainage. The unit encompasses approximately 46,917 ha (115,939 ac). The North Fork Feather unit is the northeasternmost of the critical habitat units. This unit is located in Plumas and Butte Counties. Approximately 81 percent of the unit consists of Federal lands managed by Plumas and Lassen National Forests, and the majority of the remaining area is privately owned. California red-legged frogs have been documented in the French Creek watershed in Butte County. This population represents one of only three existing populations in the Sierra Nevada. This unit is in need of special management, including the eradication of exotic predators in suitable breeding habitat adjacent to documented breeding habitats. Other necessary management may include re-establishment of red-legged frogs within the area; however, natural recolonization is likely to occur if nonnative predators are removed.

Unit 2

Unit 2 is an artifact of the previous proposed designation of critical habitat for the California red-legged frog. There is no Unit 2 in this current proposal.

Unit 3. Weber Creek/Cosumnes Unit

Unit 3 consists of drainages in the Weber Creek and North Fork Cosumnes River watersheds in El Dorado County. The unit encompasses approximately 24,090 ha (59,531 ac), of which 36 percent is within the El Dorado National Forest and 64 percent is privately owned. California red-legged frogs have been documented in the Weber Creek watershed. This population represents one of only three existing populations in the Sierra Nevada. This unit requires special management, including the eradication of exotic predators in suitable breeding habitat adjacent to documented breeding habitats. Other necessary management may include re-establishment of red-legged frogs within the area; however, natural recolonization is likely to occur if nonnative predators are removed.

Unit 4

Unit 4 is an artifact of the previous proposed designation of critical habitat for the California red-legged frog. There is no Unit 4 in this current proposal.

Unit 5. Yosemite Unit

Unit 5 consists of drainages found in the tributaries of the Tuolumne River and Jordan Creek, a tributary to the Merced River, in Tuolumne and Mariposa Counties. The unit encompasses approximately 50,316 ha (124,336 ac), of which 100 percent is managed by Stanislaus National Forest or the National Park Service (NPS). Historically, California red-legged frogs were found in several locations in Unit 5 and in adjacent areas, including two historical occurrences from 1984. Although this unit currently is considered unoccupied, it contains all of the constituent elements and is in need of special management practices that include the eradication of nonnative predators in suitable breeding habitat. This area is a candidate for reestablishment, and is within a core recovery area as defined in the draft Recovery Plan and considered essential to the conservation of California red-legged frogs in the Sierra Nevada.

Unit 6. Headwaters of Cottonwood Creek Unit

Unit 6 consists of drainages found within the headwaters of Cottonwood and Red Bank Creeks in Tehama County. The unit encompasses approximately 15,498 ha (38,300 ac), of which approximately 18 percent is within the boundaries of the Mendocino National Forest; the majority of the remaining 82 percent is privately owned. Unit 6 is occupied by a population known from CNDDB (2000) records. No additional sightings have been reported from the area. This area contains all of the constituent elements and is essential in that it represents the northernmost population of California red-legged frogs within the Coast Range. This area has not been adequately surveyed and additional populations may be present. This population may be used as a source population to provide natural reestablishment in the northern portion of the Coast Range.

Unit 7. Cleary Preserve Unit

Unit 7 consists of drainages found within the watersheds that form the tributaries to Pope Creek in Napa County. The unit encompasses approximately 13,793 ha (34,087 ac), of which approximately 88 percent is privately owned; the remaining 12 percent is managed by Federal or State agencies. Unit 7 represents one of the few documented occurrences of California red-legged frogs in this area (McGinnis 2001) and represents an important link between populations in Marin County and populations on the east side of the Coast Range.

Unit 8. Annadel State Park Preserve Unit

Unit 8 consists of the Upper Sonoma Creek watershed found partially within Annadel State Park in Sonoma County. The unit encompasses approximately 2,559 ha (6,326 ac), of which approximately 76 percent is privately owned and 24 percent is managed by the California Department of Parks and Recreation (CDPR). Unit 8 is occupied by one known core population of California red-legged frogs (Cook 1997). This area represents a source population with potential linkage to the Sears Point unit as well as units to the west.

Unit 9. Stebbins Cold Canyon Preserve Unit

Unit 9 consists of drainages found within and adjacent to Stebbins Cold Canyon Preserve and the Quail Ridge Wilderness Preserve in Napa and Solano Counties. The unit is comprised of watersheds that form Capell Creek, including Wragg Canyon, Markley Canyon, Steel Canyon, and Wild Horse Canyon watersheds. The unit encompasses approximately 8,589 ha (21,227 ac), of which approximately 75 percent is privately owned and 25 percent is managed by the University of California Natural Reserve System, the Quail Ridge Wilderness Conservancy, and the Bureau of Land Management (BLM). Unit 9 represents one of the historic occurrences of California red-legged frogs in this area, and represents an important link between populations in Marin County and populations on the east side of the Coast Range.

Unit 10. Sears Point Unit

Unit 10 consists of Stage Gulch and Lower Petaluma River watersheds, tributaries to the Petaluma River. This unit is located in and adjacent to Sears Point in Sonoma and Marin Counties and encompasses approximately 4,358 ha (10,771 ac), all of which is privately owned. Unit 10 is occupied by several subpopulations. Essential breeding habitat is dispersed throughout the unit, and has been documented in several ponds and streams. This unit provides linkages to the units to the north, east, and west.

Unit 11. American Canyon Unit

Unit 11 consists of watersheds within and adjacent to American Canyon Creek and Sulphur Springs Creek in Napa and Solano Counties. Watersheds within this unit include Fagan Creek, a tributary to the Napa River, the Jameson Canyon watershed, and the Sky Valley and Pine Lake watersheds that flow into Lake Herman. The unit encompasses approximately 11,240 ha (27,779 ac), of which 99 percent is privately owned. Unit 11 is occupied by several subpopulations.

Unit 12. Point Reyes Unit

Unit 12 consists of watersheds within and adjacent to Bolinas Lagoon, Point Reyes, and Tomales Bay in Marin and Sonoma Counties. This unit encompasses approximately 81,168 ha (200,572 ac); 44 percent is managed by the NPS, CDPR, and the Marin Municipal Water District, and 56 percent is privately owned. Unit 12 is occupied with several populations known primarily through research by G. Fellers, BRD (Service files). Essential breeding habitat is dispersed throughout the unit. This unit contains one of the largest known populations of California red-legged frogs.

Unit 13. Tiburon Peninsula Unit

Unit 13 consists of the Belvedere Lagoon watershed within and adjacent to the Tiburon Peninsula in Marin County. The unit encompasses approximately 628 ha (1,554 ac), all of which is privately owned. Unit 12 is occupied by one known breeding population known from CNDDB (2000) records.

Unit 14. San Mateo/Northern Santa Cruz Unit

Unit 14 consists of coastal watersheds within San Mateo County and northern Santa Cruz County that drain into the Pacific Ocean. The unit encompasses approximately 96,296 ha (237,955 ac), of which 83 percent is privately owned; the remaining 17 percent is primarily managed by the San Francisco Public Utilities Commission (SFPUC) and CDPR. Unit 14 is occupied by several core subpopulations known from various sources including formal consultations with the U.S. Army Corps of Engineers (Corps) (Service files). Essential breeding habitat is dispersed throughout the unit; populations have been documented in ponds and wetlands throughout Unit 14. This area contains numerous areas with large populations including Pescadero Marsh, and watersheds to the south.

Unit 15. East Bay/Diablo Range Unit

Unit 15 consists of watersheds within Contra Costa, Alameda, San Joaquin, Santa Clara, Stanislaus, San Benito, Merced, and Fresno Counties. The unit encompasses approximately 426,480 ha (1,053,850 ac), of which 87 percent is privately owned; the remaining 13 percent is managed, in part, by East Bay Regional Park District (EBRPD), East Bay Municipal Utilities District (EBMUD), Contra Costa Water District (CCWD), U.S. Bureau of Reclamation (BOR), U.S. Department of Energy (DOE), CDPR, SFPUC, CDFG, Santa Clara Valley Water District, and DWR. Unit 15 is occupied with several large core subpopulations, including the population within CCWD and EBRPD lands, and essential breeding habitat is located throughout the unit.

Unit 16. Pajaro River Unit

Unit 16 consists of portions of two watersheds that are part of the Pajaro River Drainage, the Flint Hills watershed in San Benito County, and the Santa Clara Valley watershed in Santa Clara and San Benito Counties. The unit encompasses approximately 19,524 ha (48,247 ac) and is all privately owned. Unit 16 is occupied and is an essential unit in providing connectivity from the outer coast plain and ranges to the inner Coast Ranges.

Unit 17. Elkhorn Slough/Salinas River Unit

Unit 17 consists of coastal drainages of southern Santa Cruz and northern Monterey Counties. The unit is located in Santa Cruz, Monterey, and San Benito Counties. The unit encompasses approximately 66,799 ha (165,067 ac), of which 93 percent is privately owned; CDPR and the Elkhorn Slough National Estuarine Research Reserve manage the remaining 7 percent. Unit 17 is occupied and provides connectivity from the coastal plain and outer coast ranges to the inner coast ranges. The unit represents a unique ecological set in that it is a large estuary/freshwater slough system not typically found on the California coast.

Unit 18. Carmel River Unit

Unit 18 consists of drainages comprising the Carmel River watershed in Monterey County. This unit encompasses approximately 62,976 ha (155,620 ac), of which approximately 26 percent is managed by the Los Padres National Forest and CDPR, while the remaining 74 percent is privately owned. Unit 18 is occupied, and populations of California red-legged frogs are found throughout the drainage from the headwaters to the coast. This unit provides connectivity from the Elkhorn Slough unit to the more southern coastal units.

Unit 19. The Pinnacles Unit

Unit 19 consists of two watersheds, Gloria Lake and George Hansen Canyon, in San Benito and Monterey Counties. This unit encompasses approximately 11,051 ha (27,309 ac), of which 57 percent is managed by the NPS and BLM; the remaining 43 percent is privately owned. Unit 19 is occupied and is representative of the inner coast range. The unit provides connectivity between the Pajaro River and other populations to the north and populations in southern Monterey County and northern San Luis Obispo County.

Unit 20. Estrella River/Cholame Creek Unit

Unit 20 consists of the drainages comprising the Cholame Creek, Estrella River, and the Saw Tooth Ridge watersheds in Monterey, San Luis Obispo, and Kern Counties. The unit encompasses approximately 159,576 ha (394,325 ac), of which 99 percent is privately owned and the remaining 1 percent is federally managed. Unit 20 is occupied by a large population. The unit contains areas in a unique ecological setting of springs, wetlands and vernal pools in a very dry ecological setting. This unit also provides connectivity between inner and outer Coast Ranges and into the Transverse Ranges.

Unit 21. San Simeon Unit/Morro Bay Unit

Unit 21 consists of the coastal watersheds of San Luis Obispo County from Arroyo de la Cruz south to Los Osos Creek. The unit encompasses approximately 84,757 ha (209,445 ac), of which 94 percent is privately owned; the remaining 6 percent is managed by CDPR and Federal agencies. Unit 21 is occupied and contains several core populations of California red-legged frogs. This unit also supports a unique ecological setting, representative of the central coastal oak savannah grassland. This unit also provides connectivity from the outer Coast Range in Monterey County into the Transverse Ranges in San Luis Obispo and Santa Barbara Counties.

Unit 22. Lopez Lake/Arroyo Grande Creek Unit

Unit 22 consists of the watersheds of Arroyo Grande Creek and its tributaries in San Luis Obispo County. The unit encompasses approximately 34,500 ha (85,254 ac), of which 79 percent is privately owned and Los Padres National Forest and BLM manage the remaining 21 percent. Unit 22 is occupied and provides habitat connectivity from the San Simeon Unit-Morro Bay Unit down into the Sisquoc River Unit and Transverse Range.

Unit 23. Coastal Dunes Unit

Unit 23 consists of coastal watersheds comprising the coastal dune ponds from Arroyo Grande south to San Antonio Creek in San Luis Obispo and Santa Barbara Counties. The unit encompasses approximately 21,358 ha (52,782 ac), of which 3 percent is managed by Federal,

State, and local municipalities (primarily Service and CDPR), with the remaining 97 percent in private ownership. Unit 23 is occupied and represents a core population occupying a unique coastal dune system. This unit also provides connectivity between the Lopez Lake/Arroyo Grande Creek Unit down into the Santa Ynez River Unit.

Unit 24. Santa Ynez River Unit

Unit 24 consists of watersheds forming the Santa Ynez River in Santa Barbara County. The unit encompasses approximately 98,744 ha (244,004 ac), of which approximately 60 percent is privately owned; the BOR and Los Padres National Forest manage the remaining 40 percent. Unit 24 is occupied and contains core populations. Frogs are found on the Santa Ynez River from the headwaters to the estuary. The headwaters provide connectivity to the Sisquoc River Unit and the Matilija/Sespe/Piru Creek Unit. This unit provides essential connectivity from coastal dune systems, up the Santa Ynez River to the headwaters of the Transverse Range.

Unit 25. Sisquoc River Unit

Unit 25 consists of watersheds forming the drainages of the Sisquoc River in Santa Barbara County. These include the Cherokee Spring, Ernest Blanco Spring, Horse Canyon, La Brea Creek, Manzano Creek, Peach Tree Spring, and the Lower Sisquoc River watersheds. The unit encompasses approximately 49,284 ha (121,785 ac), of which 39 percent is privately owned, and 61 percent is managed by the Los Padres National Forest. Unit 25 is occupied. This unit represents a core population that provides connectivity from Lopez Lake/Arroyo Grande Creek Unit into the westernmost portion of the Transverse Ranges. It is also the only undammed river included as critical habitat in this region; for this reason, the threats of nonnative fish are minimal.

Unit 26. Coastal Santa Barbara Unit

Unit 26 consists of coastal tributaries including the Bear Creek watershed, east to and including the Ellwood Canyon watershed in Santa Barbara County. The unit encompasses approximately 39,977 ha (98,791 ac), of which 23 percent is managed by the Los Padres National Forest and the CDPR; the remaining 77 percent is privately owned. Unit 26 is occupied by numerous small populations. It contains a unique ecological setting: numerous and relatively small watersheds along a south-facing coastal terrace drain directly into the Pacific Ocean. This type of habitat is not found elsewhere in California. Populations in this unit may play an important role in stabilizing populations in tributaries to the Santa Ynez River, which is affected by agriculture, water management, and non-native species.

Unit 27. Matilija/Sespe/Piru Creek Unit

This unit consists of watersheds that comprise portions of the Matilija, Sespe, and Piru Creek drainages in Santa Barbara, Ventura, and Los Angeles Counties. The unit encompasses approximately 126,955 ha (313,716 ac), of which 96 percent is managed by the Los Padres National Forest and 4 percent is privately owned. Unit 27 is occupied and provides connectivity across the Transverse Ranges from the Santa Ynez River Unit to the San Francisquito-Amargosa Creek Unit. The Sespe Creek area, which includes portions of the Sespe Wilderness and provides the primary east-west connectivity, currently supports large numbers of bullfrogs and predatory fish and is in need of special management.

Unit 28. San Francisquito-Amargosa Creek Unit

This unit consists of San Francisquito and Amargosa Creeks and the intervening drainages in Los Angeles County, including all or parts of the Lancaster, Rock Creek, Acton, Bouquet Eastern, Mint Canyon, and Sierra Pelona watersheds. The unit encompasses approximately 42,851 ha (105,890 ac), of which 80% percent is primarily managed by the Angeles National Forest; the remaining 20% percent is privately owned. Unit 28 is occupied, supporting a substantial core population and may be a source population for units to the south and west. This unit also supports the only known population occupying a drainage flowing into the Mojave Desert.

Unit 29. Malibu Coastal Unit

This unit consists of the upper coastal watersheds in the Santa Monica Mountains of Ventura and Los Angeles Counties that drain into the Pacific Ocean near Malibu, including the West Las Virgenes Canyon, Lindero Canyon, Sherwood, Triunfo Canyon, East Las Virgenes Canyon, and Monte Nido watersheds. The unit encompasses approximately 21,235 ha (52,475 ac), of which approximately 67 percent is privately owned and 33 percent is managed in part by the NPS, CDPR, and local municipalities. Unit 29 contains one occupied drainage; California red-legged frogs have likely persisted in this drainage because of its isolation from the nonnative predators that are prevalent in most drainages in this recovery unit. Unit 29 contains all of the constituent elements, in addition it supports a habitat mosaic of coastal sage scrub, coast live oak woodlands, and grasslands that is substantially different from habitat contained in other units.

Unit 30. Santa Rosa Plateau/Santa Ana Mountains Unit

This unit consists of portions of the watersheds comprising the Santa Rosa Plateau and the Santa Ana Mountains in Riverside and San Diego Counties, including De Luz Creek, Murrieta, and San Mateo Canyon watersheds. The unit encompasses approximately 23,319 ha (57,627 ac), of which approximately 69 percent is managed by the U.S. Forest Service (Forest Service), and approximately 31 percent is privately owned (a portion of which is owned by The Nature Conservancy).

The unit includes habitat essential to the conservation of the California red-legged frog, and is within a core recovery area, as defined in the draft Recovery Plan. This unit contains a small, genetically unique population on The Nature Conservancy's Santa Rosa Plateau Ecological Reserve (Reserve). This unit is the focal point of recovery efforts essential for the conservation of the California red-legged frog and its genetic diversity in southern California. The Reserve and adjacent watershed lands contain riparian habitat with the primary constituent elements essential to the maintenance of the California red-legged frog population and the re-establishment of the subspecies in southern California. A recovery program is currently being implemented on the Reserve that includes habitat restoration, nonnative species/predator removal, and augmentation of the red-legged frog population. Preliminary discussions have been initiated with the Cleveland National Forest concerning re-establishment of California red-legged frogs in the San Mateo watershed. Additionally, The Nature Conservancy has acquired lands between the current Reserve and Cleveland National Forest, and intends to acquire additional lands in this corridor to add to the Reserve. Habitat restoration, and nonnative predator management activities are being conducted in these areas, and these lands are being evaluated for possible red-legged frog re-establishment.

Unit 31. Tujunga Unit

This unit consists of portions of the Tujunga watersheds in Los Angeles County. It encompasses approximately 29,744 ha (73,500 ac), of which 100 percent is managed by the Angeles National Forest. This unit contains

habitat essential to the conservation of California red-legged frogs in southern California and is within a core recovery area as defined in the draft Recovery Plan. Red-legged frogs are not known to currently occupy this unit, but numerous populations have been historically documented within the boundaries of the unit and adjacent Forest Service lands. This unit is a focal point for reestablishment of the California red-legged frog in southern California. Preliminary discussions have been initiated with the Angeles National Forest concerning the re-establishment project, in addition to nonnative species management and habitat restoration.

Effect of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

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. 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 the Federal action agency. Formal conference reports include an 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 critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, 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 (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the California red-legged frog, occupied habitat, or its critical habitat will require consultation under section 7. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and 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. 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 directly or indirectly destroy or adversely modify critical habitat for California red-legged frog include, but are not limited to:

(1) Sale, exchange, or lease of lands managed by the BLM, BOR, Department of Defense (DOD), DOE, NPS, or Forest Service;

(2) Regulation of activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act, with the exception of maintenance activities on ponds located on private lands for the express purposes of maintaining the area to water stock;

(3) Regulation of water flows, water delivery, damming, diversion, and

channelization by the BOR and the Corps or other water transfers, diversion, or impoundment, groundwater pumping, irrigation activity that causes barriers or deterrents to dispersal, inundates or drains habitat, or significantly converts habitat;

(4) Regulation of grazing, recreation, mining, or logging by the BLM, BOR, DOD, or NPS;

(5) Funding and implementation of disaster relief projects by the FEMA and the Natural Resource Conservation Service's Emergency Watershed Program, including erosion control, flood control, streambank repair to reduce the risk of loss of property;

(6) Funding and regulation of new road construction or road improvements by the FHA;

(7) Funding of construction or development activities by the Department of Housing and Urban Development or other agencies that destroy, fragment, or degrade suitable habitat;

(8) Clearing of vegetation and hydrological modifications by the DOE or other agencies; and

(9) Promulgation of air and water quality standards under the Clean Air Act and the Clean Water Act and the clean up of toxic waste and superfund sites under the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act by the EPA.

With the exception of the two unoccupied units, all lands proposed for designation as critical habitat are within the geographic range of the California red-legged frog and are occupied by the subspecies, and/or are likely to be used by the subspecies, whether for foraging, breeding, growth of larvae and juveniles, intra-specific communication, dispersal, migration, genetic exchange and sheltering. Federal agencies already consult with us on activities in areas currently occupied by the subspecies, or if the subspecies may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the subspecies. Furthermore, in unoccupied habitat, we are only proposing to designate federally managed land as critical habitat. Thus, we do not anticipate substantial additional regulatory protection will result from the proposed critical habitat designation.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available, and to consider the economic, national security, 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.

An analysis of the economic impacts of proposing critical habitat for California red-legged frog is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. When published, copies of the draft economic analysis will be available by contacting the Sacramento Fish and Wildlife Office directly (*see* **ADDRESSES** section) or available for downloading from the Internet at *http://sacramento.fws.gov/es/documents*.

Peer Review

In accordance with our joint policy published in the **Federal Register** 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 this review is to ensure that our critical habitat designation is 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 the selected 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 public comment periods on this proposed rule during the preparation of a final rulemaking. Accordingly, the decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing 45 days following the publication of the proposal in the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and will announce the dates, times and locations of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (groupings and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule 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: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. As such, the Office of Management and Budget (OMB) has reviewed this rule. The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the California red-legged frog. This analysis will also be used to determine

compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

This analysis will be made available for public review and comment. Copies may be obtained from the Sacramento Fish and Wildlife Office's Internet Web site at *http://sacramento.fws.gov/es/documents*, or by contacting the Sacramento Fish and Wildlife Office directly (*see* **ADDRESSES** section)

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

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

The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define "substantial number'' or "significant economic impact.'' Consequently, to assess whether a "substantial number'' of small entities are affected by this proposed designation, the following analysis considers the relative number of small entities likely to be impacted in an area. The SBREFA also amended the RFA to require a certification statement.

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

To determine if this proposed rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, oil and gas production, timber harvesting etc.). We considered each industry individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. In areas where occupancy by California red-legged frog is unknown, the designation of critical habitat could trigger additional review of Federal agencies pursuant to section 7 of the Act and may result in additional requirements on Federal activities to avoid destruction or adverse modification of critical habitat. There are two units (Unit 5 and Unit 31) in this proposed designation that are currently not known to be occupied by the California red-legged frog. These units occur entirely on Federal lands or are managed by Federal agencies, the Stanislaus National Forest and the NPS (Unit 5) and Angeles National Forest (Unit 31).

During the development of our last designation of critical habitat for the California red-legged frog, we conducted an economic analysis of our proposed designation (65 FR 54892, September 11, 2000) and made it available to the public for review on December 21, 2000 (65 FR 80409). Because the scope of this analysis was the proposed critical habitat, it evaluated the potential economic impacts of the proposed regulation to approximately 2,175,000 ha (5,373,650 ac), a significantly larger area than was designated as final critical habitat for the California red-legged frog. In that analysis we additionally evaluated the potential effect of the proposed regulation on small entities. We determined in that analysis that small business in the construction, development, mining, ranching and timber industries could potentially be affected by proposed regulation if the designation leads to significant project modifications or delays associated with those activities. The results of the analysis further suggested that if the areas proposed as critical habitat were designated, it appeared unlikely that the designation would lead to a significant increased number of consultations and project modifications (*i.e.*, significant additional regulatory and/or economic burden) because the majority of the area designated is considered occupied by the species. As such, this rule is not expected to result in any significant regulatory restrictions in addition to those currently in existence.

Many of the activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are already currently required to comply with the protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities. The analysis did, however, recognize that to the extent that these industries constitute small business entities, there may be some costs resulting from the regulation. However, we did not believe that these costs would reach the threshold for being considered significant economic impacts to a substantial number of small business entities.

In the development of our final designation of critical habitat, we significantly modified our proposal such that only 1,674,582 ha (4,140,440 ac) were designated, a reduction of approximately 22 percent or 488,580 ha (1,206,330 ac) from the proposal. Of the approximate 1,674,582 ha (4,140,440 ac) that were finalized and which are currently being proposed for designation as critical habitat for the California red-legged frog, an estimated 5 percent or 81,020 ha (200,212 ac) is considered unoccupied habitat (Units 5 and 31). Because the scope of the final designation and this new proposed designation is significantly less than that originally proposed in 2000 and analyzed, we believe that it is unlikely

that this proposal, if finalized, would result in a significant economic impact on a substantial number of small entities. We will further analyze this when we conduct our analysis of the potential economic effects of this new proposed designation of critical habitat for the California red-legged frog.

Therefore, based on the analysis conducted for our previous designation, we are certifying that this proposed designation of critical habitat is not expected to have a significant adverse impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

This assessment of economic effect may be modified prior to publication of a final rule, based on a review of the draft economic analysis currently being prepared pursuant to section 4(b)(2) of the Act, Executive Order 12866, and public comments received during the public comment period. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F. 3d 1277 (10th Cir. 2001).

Executive Order 13211

On May 18, 2001, the President issued an Executive Order 13211 (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered by OMB to be a significant regulatory action under E.O. 12866 in that it may raise novel legal and policy issues. However, we do not anticipate that the proposed designation of critical habitat for the California red-legged frog will significantly affect energy supplies, distribution, or use. Therefore, we do not believe that this action is a significant action and no Statement of Energy Effects is required. We will further examine any potential effect in our economic analysis of this proposal.

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

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

(a) This rule will not "significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the subspecies, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule is not anticipated to have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal actions. The rule will not increase or decrease the current restrictions on private property concerning take of the California red-legged frog. Due to current public knowledge of the subspecies' protections, the prohibition against take of the subspecies both within and outside of the designated areas, and the fact that critical habitat provides no substantial incremental restrictions in areas occupied by the California red-legged frog, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuances of incidental take permits. Owners of areas that are included in proposed critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the California red-legged frog.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. The impact of the proposed designation on State and local governments and their activities is not believed to be significant. We will examine this more fully in our economic analysis of the proposal. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning, rather than forcing/necessitating them to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the California red-legged frog.

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

This proposed rule does not contain any information collection requirements that require OMB approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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); Executive Order 13175 (November 9, 2000; 65 FR 67249) and DOI's manual at 512 DM 2, we readily acknowledge our

responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

We are not aware of any Tribal lands essential for the conservation of the California red-legged frog within the areas proposed for designation as critical habitat. Therefore, this proposal does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

Relationship With Mexico

We are not aware of any existing national-level regulatory mechanism in Mexico that would protect the California red-legged frog or its habitat. Although new legislation for wildlife is pending in Mexico, and Mexico has laws that could provide protection for rare species, there are enforcement challenges. Even if specific protections were available and enforceable in Mexico, the portion of the California red-legged frog's range in Mexico alone, in isolation, would not be adequate to ensure the long-term conservation of the subspecies.

References Cited

A complete list of all references cited in this final rule is available upon request from the Sacramento Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are Douglas Krofta of the Arlington Fish and Wildlife Office and staff from the Carlsbad, Ventura, and Sacramento Fish and Wildlife Offices (*see* **ADDRESSES** section).

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 outlined in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

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. Amend § 17.95(d) by revising the introductory text of the critical habitat designation for the California red-legged frog (*Rana aurora draytonii*) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

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CALIFORNIA RED-LEGGED FROG (*Rana aurora draytonii*)

1. Critical habitat units are depicted for Alameda, Butte, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Marin, Mariposa, Merced, Monterey, Napa, Plumas, Riverside, San Benito, San Diego, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Stanislaus, Tehama, Tuolumne, and Ventura Counties, California, on the maps below.

2. Within these areas, the primary constituent elements for the California red-legged frog consist of three components:

(a) Aquatic habitat with a permanent water source with pools (*i.e.*, water bodies) having a minimum depth of 0.5 m (20 in) for breeding and which can maintain water during the entire tadpole rearing season;

(b) Upland areas up to 90 m (300 ft) from the water's edge associated with the above aquatic habitat that will provide for shelter, forage, maintenance of the water quality of the aquatic habitat, and dispersal; and

(c) Upland barrier-free dispersal habitat that is at least 90 m (300 ft) in width that connects two or more suitable breeding locations defined by the aquatic habitat above, all within 2 km (1.25 mi) of one another.

3. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, other paved areas, lawns, and other urban landscaped areas, and uplands removed from essential aquatic and dispersal habitat, will not contain one or more of the primary constituent elements and, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

4. Map 1, Index map of critical habitat units for California Red-Legged Frog, follows:

* * * * *

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary of Fish and Wildlife and Parks.

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