

After the public meeting, OPS began discussing a conceptual model for ensuring extra protection in high-consequence areas. This model, along with additional information on the public meeting and on pipeline system integrity management issues for high-consequence areas, is posted on OPS's pipeline system integrity management Internet site at <http://ops.dot.gov/imp.htm>. Information on this site includes:

- General Summary of the November 18, 1999 public meeting
 - Discussion page for facilitating communication
 - **Federal Register** Notice on the November 18, 1999 public meeting
 - Meeting Agenda and selected presentations/summaries by various speakers.
 - Meeting transcripts for November 18, 1999 public meeting
 - Summary of the Breakout sessions
 - Conceptual pipeline system integrity management model for high-consequence areas
 - Link to the DMS page for submissions to the electronic docket
 - Contact (e-mail) information for Mike Israni and Beth Callsen
- RSPA encourages all interested persons to access the pipeline system integrity management conceptual model and other background information at <http://ops.dot.gov/imp.htm>.

In particular, OPS wants comment on how to improve protection for the public and the environment for pipelines located in high-consequence areas through a more integrated approach to identifying and addressing risks. Interested persons are urged to present their views on whether and what additional inspection requirements or other preventive and mitigative actions are needed to ensure adequate protection of high-consequence areas. Comments are sought from pipeline companies on the extent of their inspection and testing programs, the types of inspection tools employed, and experience with intervals between inspections and testing. OPS is also interested in comments on the expected cumulative costs and benefits associated with implementing a pipeline system integrity management process, on whether any of these measures would have a disproportionate impact on small operators, and any concerns on the information collection, recordkeeping, or reporting requirements of this initiative under the Paperwork Reduction Act of 1995 (44 USC 3057(d)).

Authority: 49 U.S.C. Chapter 601 and 49 CFR 1.53.

Issued in Washington, DC on December 17, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF83

Endangered and Threatened Wildlife and Plants: Proposed Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the southern California distinct vertebrate population segment (DPS) of mountain yellow-legged frog (*Rana muscosa*) as endangered, pursuant to the Endangered Species Act of 1973, as amended (Act). In southern California, this DPS has been reduced to only a few isolated remnants in the San Gabriel, San Jacinto, and San Bernardino Mountains. Hypothesized causes of the decline include predation from introduced trout or possibly some other widespread environmental effects such as airborne contaminants. These effects have probably acted in combination to produce the decline. The chronology of the decline is not well documented, but it appears that a precipitous decline occurred over the last three or four decades. The decline went largely unnoticed and was not studied. In addition to predation from trout and other widespread factors, the few remaining frogs are now threatened by recreational suction dredging for gold and human activities at campgrounds and day use areas. The remnant populations are so small that they are now at risk from random genetic, demographic, and environmental effects as well. This proposed rule constitutes the 12-month finding on a petition to list the southern California population of mountain yellow-legged frog as threatened or endangered. This proposed rule, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this DPS. We welcome data and comment from the public on this proposal.

DATES: You must submit any comments by February 22, 2000 and public hearing requests by February 7, 2000.

ADDRESSES: You may send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008. You may inspect comments and materials received, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Berg at the above address (telephone 760/431-9440).

SUPPLEMENTARY INFORMATION:

Background

The mountain yellow-legged frog is a true frog in the family Ranidae. Mountain yellow-legged frogs were originally described by Camp in 1917 (as cited by Zweifel 1955) as a subspecies of *Rana boylei*. Zweifel (1955) demonstrated that frogs from the high Sierra and the mountains of southern California were somewhat similar to each other yet were distinct from the rest of the *R. boylei* (= *boylei*) group. Since that time, most authors have followed Zweifel, treating the mountain yellow-legged frog as a full species, *Rana muscosa*.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Jennings and Hayes 1994; Zweifel 1955). The pattern is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous spots with a mixture of sizes and shapes, to irregular lichen-like patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). The back half of the upper lip is pale. Folds are present on each side of the back, but usually they are not prominent (Stebbins 1985). The throat is white or yellow, sometimes with mottling of dark pigment (Zweifel 1955). The belly and undersurface of the high limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. The iris is gold with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

In the Sierra Nevada Mountains of California, the mountain yellow-legged frog ranges from southern Plumas County to southern Tulare County (Jennings and Hayes 1994), at elevations

mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the Sierra Nevada are isolated from the frogs of the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)). The southern California frogs now occupy portions of the San Gabriel, San Bernardino, and San Jacinto Mountains. Zweifel (1955) noted the presence of an isolated southern population on Mt. Palomar in northern San Diego County, but this population appears to be extinct (Jennings and Hayes 1994). In southern California, the elevation range reported by Stebbins (1985) is 182 m (600 ft) to 2,273 m (7,500 ft). Representative localities, including some that are no longer occupied, which demonstrate the wide elevation range that mountain yellow-legged frogs inhabited in southern California, include Eaton Canyon, Los Angeles County (370 m (1,220 ft)) and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)). The southern California locations now occupied by mountain yellow-legged frogs range from City Creek, in the San Bernardino Mountains (760 m (2,500 ft)), to Dark Canyon in the San Jacinto Mountains (1,820 m (6,000 ft)).

Southern California mountain yellow-legged frogs are diurnal, highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. In these areas, juveniles and adults feed on small, streamside arthropods (Jennings and Hayes 1994). They do not occur in the smallest creeks. The coldest winter months are spent in hibernation, probably under water or in crevices in the bank. Mountain yellow-legged frogs emerge from overwintering sites in early spring, and breeding soon follows. Eggs are deposited in shallow water where the egg mass is attached to vegetation or the substrate. In the Sierra Nevada, larvae select warm microhabitats (Bradford 1984 cited in Jennings and Hayes 1994), and the time to develop from fertilization to metamorphosis reportedly varies from 1 to 2.5 years (Jennings and Hayes 1994).

Prior to the late 1960s, mountain yellow-legged frogs were abundant in many southern California streams (G. Stewart, *in litt.* 1995), but they now appear to be absent from most places in which they previously occurred. Jennings and Hayes (1994) believe that mountain yellow-legged frogs are now absent from more than 99 percent of their previous range in southern California. This decline is part of a well-known larger pattern of declines among native ranid frogs in the western United States (Hayes and Jennings 1986; Drost and Fellers 1996). Some of the western

ranid frog species experiencing noticeable declines are the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteiventris*), the Cascades frog (*R. cascadae*), and the Chiricahua leopard frog (*R. chiricauhensis*) (62 FR 49398). Nowhere have the declines been any more pronounced than in southern California, where, besides declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnants (61 FR 25813), and the foothill yellow-legged frog (*R. boylei*) may be extinct (Jennings and Hayes 1994.)

The mechanisms causing the declines of western frogs are not well understood and are certain to vary somewhat among species, but the two most common and well-supported hypotheses for widespread declines of western ranid frogs are: (1) Past habitat destruction related to unregulated activities such as logging and mining and more recent habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986; 61 FR 25813); and (2) alien predators and competitors (Bradford 1989; Knapp 1996; Kupferberg 1997). Natural populations may be killed off directly by these factors operating alone or in combination, or these factors so severely disrupt the normal population dynamics that when local extinctions occur, regardless of the cause, natural recolonization is impossible. Other environmental factors that could have adverse effects over a wide geographic range include pesticides, certain pathogens, and ultraviolet-B (beyond the visible spectrum) radiation, but their role, if any, in amphibian declines is not well understood (Reaser 1996). These factors, acting singly or in combination, may be contributing to widespread, systematic declines of western ranid frogs. Determining their effects, however, is not an easy task (Reaser 1996; Wake 1998), and the Department of the Interior (USDOI) currently supports an initiative to fund research on the causes of amphibian declines (see examples in USDOI 1998).

Some of the same factors that are hypothesized to have caused declines of other western ranid frogs are likely to be responsible for the reduction of the mountain yellow-legged frog in southern California. Because the declines have been so precipitous, and have spared only a small number of frogs in a few localities, the factors, and their interactions, that caused the decline may never be fully understood. We believe that these factors are still

operating, and unless reversed, a high probability exists that this frog may be extinct in southern California within a few decades. In the case of the mountain yellow-legged frog, the only factor listed above that we believe can be ruled out as a likely cause of decline is habitat destruction related to activities such as logging, mining, irrigated agriculture, and commercial development. The range of the mountain yellow-legged frog in southern California is mainly on public land administered by the U.S. Forest Service (FS). Most of the rugged canyons and surrounding mountainous terrain have been altered little and look much the same today as they did when earlier naturalists such as Lawrence Klauber collected mountain yellow-legged frogs there in the early decades of the 1900s.

Current Range and Status

In southern California, mountain yellow-legged frogs can still be found in four small streams in the San Gabriel Mountains, the upper reaches of the San Jacinto River system in the San Jacinto Mountains, and at a single locality on City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains (Jennings and Hayes 1994; M. D. Wilcox *in litt.*, 1998). These areas along with the numbers of frogs most recently observed in each area are described below.

San Gabriel Mountains: Surveys conducted from 1993 to 1997 revealed small isolated populations in the upper reaches of Prairie Creek/Vincent Gulch, Devil's Canyon, and Alder Creek/East Fork, on the East Fork of the San Gabriel River, and Little Rock Creek on the Mojave River (Jennings and Hayes 1994 and references therein; Jennings 1995; Jennings 1998). The surveys involved one to three field biologists and were conducted over 1–5 days per site. Over the course of these field studies, 15 adults or fewer were observed at any 1 site, and, after the 1995 season, Jennings (1995) concluded that the actual population at each of the sites was only 10–20 adults.

San Jacinto Mountains: Small populations of mountain yellow-legged frogs also occur in four tributaries in the upper reaches of the North Fork, San Jacinto River on Mount San Jacinto: Dark Canyon, Hall Canyon, Fuller Mill Creek, and the main North Fork, San Jacinto River (Jennings and Hayes 1994; Jennings 1995; Jennings 1998). The number of frogs occupying these sites is not known, but fewer than 10 adult frogs per site per year have been observed in surveys from 1995 to the present.

San Bernardino Mountains: A few tadpoles and 26 recently transformed

juveniles, but no adults, were rediscovered on a roughly 1-mile reach of the East Fork, City Creek during the summer of 1998 (M. D. Wilcox *in litt.*, 1998). Previous to this finding, mountain yellow-legged frogs had not been observed in the San Bernardino Mountains since the 1970s (Jennings and Hayes 1994), even though surveys were conducted during the summer and fall of 1997 and 1998 (Holland 1997; Tierra Madre 1999).

When frogs were encountered during field surveys accomplished between 1988 and 1995, only a few individuals were observed. Jennings and Hayes (1994) and Jennings (1995) suggested that the entire population of mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (8 more or less isolated sites) was probably fewer than 100 adult frogs. Their rough estimate is based on a compilation of the results of visual surveys generally conducted on a single day, not on formal population abundance estimation techniques. While the precise number of adult frogs may be greater than 100, we concur with Jennings and Hayes (1994) that, in the San Gabriel and San Jacinto Mountains, the available data indicate that this once widespread species is now found in only a small number of relatively isolated populations. We do not know the population size of adult frogs at the recently rediscovered site on the east fork of City Creek in the San Bernardino Mountains, but because no adults and only a few juveniles and tadpoles were encountered, the adult population is probably small. Thus, we conclude that each of the three mountain ranges (San Gabriel, San Jacinto, San Bernardino) contains a small number of small, relatively isolated populations.

Distinct Vertebrate Population Segment

We analyzed the mountain yellow-legged frog according to the joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations, published in the **Federal Register** on February 7, 1996 (61 FR 4722). We consider three elements in determining whether a vertebrate population segment could be treated as threatened or endangered under the Act: discreteness, significance, and conservation status in relation to the standards for listing. Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity,

or (2) populations delimited by international boundaries. We determine significance either by the importance or contribution, or both, of a discrete population to the species throughout its range. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the taxon in its genetic characteristics. If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards.

Discreteness: The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which isolate Sierran frogs from those in the mountains of southern California. The distance of the separation is about 225 km (140 mi), but the separation may not have been this great in the recent past because a frog collected in 1952 on Breckenridge Mountain in Kern County was identified by Jennings and Hayes (1994) as a mountain yellow-legged frog. The geographic separation of the Sierran and southern California frogs was recognized in the earliest description of the species by Camp (1917, cited in Zweifel 1955), who treated frogs from the two localities as separate subspecies within the *R. boylii* group. He designated the Sierran frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa*, based on geography and subtle morphological differences. Zweifel (1955) reevaluated the morphological evidence and found it insufficient to warrant Camp's recognition of two subspecies, the chief difference between the two being hind-limb length.

More recently, Ziesmer (1997) analyzed the calls of Sierran (Alpine and Mariposa Counties) and southern California (San Jacinto Mountains and Riverside County) mountain yellow-legged frogs. He found that the calls of Sierran frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency. Based on a limited sample, Ziesmer concluded that the results supported the hypothesis that mountain yellow-legged

frogs from the Sierra Nevada and southern California are separate species.

Allozyme (a form of an enzyme produced by a gene) variation throughout the range of the mountain yellow-legged frog has been examined, but the results are open to interpretation (Jennings and Hayes 1994 and references therein). In the work most applicable to the question of the distinctiveness of the Sierran and southern California frogs, David Green (pers. comm., 1998) analyzed allozyme variation in central Sierran mountain yellow-legged frogs (four individuals, Tuolumne County) and southern California mountain yellow-legged frogs (two individuals, Riverside County). He found fixed differences at 6 of 28 loci (sites on a chromosome occupied by specific genes). These limited, unpublished data suggest that Sierran and southern California mountain yellow-legged frogs are different at a level that could support the recognition of full species. However, because of the small number of individuals per sample and the limited number of samples, we view these results cautiously. It is possible that existing variation at those six loci may not have been detected with such a small number of individuals sampled. To better understand whether a genetic discontinuity significant enough to warrant full species rank exists between Sierran frogs and those from the mountains of southern California, samples of frogs from the southern Sierra Nevada, especially the Greenhorn Mountains, would be of particular interest.

Although Green's limited allozyme analysis may not be sufficient to support recognizing the Sierran and southern California populations as separate species, it does support the conclusion of significant geographic separation. This conclusion is also supported by earlier observations of morphological differences (Zweifel 1955, and references therein) and differences in vocalizations (Ziesmer 1997). Considered together, the evidence supports an interpretation of isolation between the two populations of frogs over a very long period. We find that the southern California frogs meet the criterion of "marked separation from other populations of the same taxon" and qualify as discrete according to the Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722).

Significance: One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the habitats they occupy. Zweifel (1955) observed that the frogs in southern California are typically found

in steep gradient streams in the chaparral belt, even though they may range up into small meadow streams at higher elevations. In contrast, Sierran frogs are most abundant in high elevation lakes and slow-moving portions of streams. Bradford's (1989) southern Sierra Nevada study site, for example, was in Sequoia and Kings Canyon National Parks at high elevations (between 2,910–3,430 m (9,600–11,319 ft)). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes of the Sierra Nevada. On the basis of habitat alone, one might easily conclude that these are two very different frogs.

The mountain yellow-legged frogs of southern California comprise the southern portion of the species' range. The extinction of this southern group would be significant because it would substantially reduce the overall range as it is currently understood, and what is now a gap in the distribution, the Tehachapi Mountains, would become the southern limit of the species' range.

In addition, evidence exists that the mountain yellow-legged frog is not simply a single species with a disjunct distribution (cited in Zweifel 1955; Stebbins 1985). As discussed above, vocal and genetic differences exist between Sierran and southern California mountain yellow-legged frogs. Although the data are limited and some important variation may have been missed, they are consistent with the earlier interpretation by Camp (1917 cited in Zweifel 1955) and numerous other authors prior to Zweifel (e.g., Stebbins 1954) who treated the two forms as taxonomically distinct. If the differences in vocalization described by Ziesmer (1997) and the allozyme variation described by Green (per. comm., 1998) accurately characterize differences between the two forms, then the Sierran and southern California frogs are quite different and have been isolated for a very long time.

Our conclusion that Sierran and southern California frogs are very different from each other, and may even merit recognition as separate subspecies or possibly even species, is based on the cumulative weight of the available evidence. We find that the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722) on the basis of the geographical, ecological, vocal, and genetic discontinuities described above.

In the remainder of this proposed rule, we evaluate the southern

California mountain yellow-legged frog for endangered status based on the Act's standards. For clarity, we refer to all mountain yellow-legged frogs south of the Tehachapi Mountains as the southern California DPS. We use the word "population" to describe all of the frogs living in a particular place.

Previous Federal Action

On July 13, 1995, we received a petition dated July 10, 1995, from D.C. "Jasper" Carlton (of the Biodiversity Legal Foundation), Bonnie M. Dombrowski, and Michael C. Long to list as threatened or endangered the southern California populations of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and the past and present distribution of the species. We reviewed the petition, supporting documentation, and other information cited in this proposed rule to determine if substantial information was available to indicate that the requested action may be warranted. On July 8, 1997, we published a 90-day finding for the petition to list the southern California populations of the mountain yellow-legged frog (62 FR 36481). We found the southern California population to be a DPS and furthermore found the petition presented substantial information indicating the listing of the species (DPS) may be warranted. Once we made the finding that the petition presented substantial information, we commenced a status review pursuant to section 4(b)(3)(A) of the Act. However, consistent with the applicable Listing Priority Guidances (62 FR 55268; 63 FR 25502), our Carlsbad Field Office completed work on higher priority listing actions before completing this 12-month finding and proposed rule to list this DPS of the mountain yellow-legged frog.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The

processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this proposed rule is a Priority 3 action.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the southern California DPS of mountain yellow-legged frogs are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

All nine known populations of southern California *Rana muscosa* occur on lands owned and managed by the FS and are clustered within three drainages, one in the San Gabriel Mountains, one in the San Bernardino Mountains, and another on Mount San Jacinto. As such, the habitats in which they live are protected against wholesale conversions to other uses. However, with so few populations remaining, and with each of those numbering only a few individuals, localized habitat alterations, which would not be appreciable if the DPS were more wide-ranging and abundant, threaten the DPS. Local habitat changes caused by recreational suction dredging for gold and human use around campgrounds, picnic grounds, and heavily used trails may harm the habitat and contribute to local extinctions wherever these activities intersect with mountain yellow-legged frogs.

Jennings (1995) observed suction dredging within the Wilderness Area where mountain yellow-legged frogs occur on the East Fork, San Gabriel River. He reported observing large quantities of trash and toxic materials being dumped into the stream bed. If this practice is continued, it could have harmful effects on the population inhabiting the East Fork, San Gabriel River. The consequences for populations on other San Gabriel River tributaries is difficult to predict, but any losses would further isolate the remaining populations and probably

reduce the time to extinction for the DPS. Other than the East Fork, San Gabriel River site, we do not know if recreational gold mining occurs or at what level on or near sites occupied by frogs. Extensive suction dredging activity at or near a breeding site could have the harmful effect of killing eggs or larvae or changing the hydrology, rendering it unsuitable for breeding. Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found dredging altered substrates and changed the habitat for fish and invertebrates.

Fairly heavy camping and day use coincides with frog habitat along the East Fork, San Gabriel River (dispersed camping), Prairie Fork Creek (campground, recently burned and presently closed by the FS), Little Rock Creek (trail, rock climbing), Dark Canyon (campground), and Fuller Mill Creek (picnic ground). In areas occupied by frogs, human presence in and along streams can disrupt the lives of eggs, larvae, and adult frogs and change the entire character of the stream and its bank and associated vegetation in ways that make whole sections of stream less suitable for frogs. Only nine very small populations remain, and at least four of these are in areas that receive reasonably heavy human camping or day use. The loss of even small numbers of frogs from any of these populations due to human camping or day use, either alone or in combination with other factors, will increase the probability of local extinction. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Numerous museum specimens from many localities (Jennings and Hayes 1994) attest to the fact that, for decades, mountain yellow-legged frogs from the southern DPS have been collected for scientific purposes. These collections probably did not have an appreciable effect. Now that the DPS has declined precipitously, populations are so few in number, and the size of each population is so small, very little or no scientific collecting of the southern DPS occurs. Collecting, scientific or amateur, if it did occur, could seriously increase the probability of extinction of any of the remaining populations. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the DPS.

C. Disease or Predation

Predation by introduced trout, including rainbow trout (*Oncorhynchus mykiss*), is one of the best documented causes of the decline of Sierran mountain yellow-legged frogs. Careful study of the distributions of introduced trout and mountain yellow-legged frogs for several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989; Knapp 1996). Bradford (1989) and Bradford *et al.* (1993) concluded that introduced trout eliminate many populations of mountain yellow-legged frogs and the presence of trout in intervening streams sufficiently isolates other frog populations so that recolonization after stochastic (random, naturally occurring) local extinctions is essentially impossible. This mechanism is sufficient to explain the elimination of Sierran mountain yellow-legged frogs from the majority of sites they once inhabited, and, alone or in combination with other factors, introduced trout have almost certainly contributed to the widespread and systematic decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and trout are routinely planted in Dark Canyon, Fuller Mill Creek in the San Jacinto Mountains, and City Creek in the San Bernardino Mountains. Most of the other streams still occupied by mountain yellow-legged frogs have histories of trout introductions and probably contain naturally reproducing, sustainable populations at, or very near, the sites occupied by the frogs. Wherever the two species co-occur, trout are likely to eliminate mountain yellow-legged frogs or keep populations low and limit dispersal. The widespread occurrence of introduced trout in the mountains of southern California may make it very difficult to reverse the decline to extinction of the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, yet on a more limited scale, is the bullfrog, *Rana catesbeiana*. Bullfrogs have been listed among the threats to other western frogs (61 FR 25813; Kiesecker and Blaustein 1998) and toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly and currently occupied by mountain yellow-legged frogs. The negative effects of bullfrogs on mountain yellow-legged frogs in the mountains of southern California are probably less widespread than those of introduced trout because

there is less overlap in their occurrence. Any habitat alterations that are favorable to bullfrogs, however, will cause them to become abundant locally. In areas where mountain yellow-legged frogs occur, this increase could lead to local extinctions and increased isolation of the remaining populations, which would probably reduce the time to extinction for the entire DPS.

Bradford (1991) documented the loss of a Sierran population of *Rana muscosa* due to the combined effect of "red-leg" disease (caused by the bacterium *Aeromonas hydrophila*) and predation by Brewer's blackbirds, *Euphagus cyanocephalus*. Another pathogen that is generating concern among those who study amphibian declines is the chytrid fungus. Chytrids may be seriously affecting amphibians in many places around the world, and they have recently been discovered on larval mountain yellow-legged frogs in the Sierra Nevada (Gary Fellers, pers. comm. 1999). Because of the small and isolated nature of the remaining populations, disease could be serious. Any local extinctions caused by disease would further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing regulatory mechanisms have not stopped the decline of mountain yellow-legged frogs in southern California. Existing regulatory mechanisms that could provide some protection for the mountain yellow-legged frog include: (1) Consideration under the California Environmental Quality Act (CEQA); (2) consideration under section 404 of the Clean Water Act (CWA); and (3) co-occurrence with other species protected by the Endangered Species Act of 1973.

The State of California considers mountain yellow-legged frogs a species of special concern, but it is not a threatened or endangered species and receives no protection under the California Endangered Species Act. California Sport Fishing Regulations include the mountain yellow-legged frog as a protected species that may not be taken or possessed at any time except under special permit from the California Department of Fish and Game. This prohibition may help prevent threats from collecting, but this threat is not a significant cause of the decline, and the DPS is expected to continue declining toward extinction even in the absence of collecting.

The CEQA requires a full public disclosure of the potential environmental impact of proposed

projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned with resources affected by the project. Section 15065 of the CEQA guidelines require a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State. Once significant impacts are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. The CEQA provides that, when overriding social and economic considerations can be demonstrated, project proposals may go forward, even in cases where the continued existence of the species may be threatened, or where adverse impacts are not mitigated to the point of insignificance.

Besides the Act, the primary Federal law that potentially affords some protection for the mountain yellow-legged frog is section 404 of the CWA. The CWA may provide some general protections for species, however, this DPS has declined precipitously under this Federal law.

The arroyo toad (*Bufo microscaphus californicus*), a federally listed endangered species, is present in the San Gabriel Mountains, but there is no benefit to the mountain yellow-legged frog because the two species occupy different areas in the San Gabriel Mountains and the arroyo toads are not known to occur elsewhere in the limited range of the mountain yellow-legged frog.

The Angeles and San Bernardino National Forests manage all known locations of mountain yellow-legged frogs in southern California. However, the FS does not include *Rana muscosa* on its list of sensitive species, although the Angeles and San Bernardino National Forests manage the frog as if it were sensitive (M. Rogers, *in litt.*, 1997). Nevertheless, the FS does not have a management plan for the mountain yellow-legged frog or an adaptive management strategy that addresses the

specific conservation and recovery needs of the species. As noted in the discussion of factors A through C above, the presence of introduced trout on FS lands is a serious threat, and, now that the DPS has been reduced to small isolated remnants, some other legal recreational activities occurring on FS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall failure or inability of existing CEQA, National Environmental Policy Act, and other Federal, State, and local ordinances and statutes to protect and provide for the conservation of this DPS.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Because the remaining populations of the DPS are small, isolated remnants, they are vulnerable to random natural events that could quickly eliminate them. It is a widely recognized principle that, in general, small populations are more vulnerable to extinction than large ones (Pimm 1991; Noss and Cooperrider 1994). Noss and Cooperrider (1994) identified four major factors that predispose small populations to extinction: (1) Environmental variation and natural catastrophes like unusually harsh weather, fires, or other unpredictable environmental phenomena; (2) chance variation in age and sex ratios or other population parameters (demographic stochasticity); (3) genetic deterioration resulting in inbreeding depression and genetic drift (random changes in gene frequencies); and (4) disruption of metapopulation dynamics (*i.e.*, some species are distributed as systems of local populations linked by occasional dispersal, which wards off demographic or genetic deterioration).

It is likely that some or a combination of these factors contribute to an increased probability of extinction of the remaining populations and the entire DPS. For example, Stewart (*in litt.*, 1995) and Jennings (*in litt.*, 1995) believe that flooding and fires could easily eliminate entire populations of mountain yellow-legged frogs, and Stewart (*in litt.*, 1995) believes flooding during the winter of 1969 was the major factor in the loss of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains. An illustration of possible demographic effects is seen in the results of a limited survey by Jennings (1995), who found skewed sex ratios in the San Gabriel Mountains populations. If the results accurately reflect the real sex ratios in these populations, the effective population sizes are much lower than the census populations. When effective population

size is small, the negative consequences can be demographic (*e.g.*, not enough individuals of a given sex) or genetic (*e.g.*, inbreeding depression), and can predispose these populations to a higher risk of extinction. The population genetics and metapopulation dynamics of the southern mountain yellow-legged frog have not been investigated, but we believe that the connectivity of populations within the DPS is substantially reduced compared to the recent past.

Because the southern DPS consists of small, isolated populations, it is particularly vulnerable to some or all of the effects of chance listed above. Given the low probability of improving the status of the DPS under the status quo, the probability of small population size playing a role in the extinction of one or more local populations within the next few years is high. Any local extinctions will further isolate the remaining populations and probably reduce the time to extinction for the entire DPS.

In summary, in southern California the mountain yellow-legged frog DPS is threatened by predation from introduced trout and possibly by other factors (*e.g.*, airborne contaminants, pathogens) that are difficult to pinpoint and are currently the subject of national and worldwide investigations. Other local factors (recreational dredging, camping, day use), that would not cause appreciable harm if the DPS had not been reduced to small remnants, now represent serious actual or potential local threats. Compounding the effects of the large-scale (trout) and local (recreation) threats, the DPS has been reduced to very small isolated or semi-isolated populations that random events are now likely to contribute to local extinctions, which will reduce the time to extinction of the entire DPS. Even though we may never fully understand all the causes of decline, the available information suggests a high probability that this frog may be extinct in southern California within a few decades. We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats facing the DPS in determining to propose listing. Based on this evaluation, we propose to list the southern California DPS of mountain yellow-legged frog as endangered. We considered but did not select other alternatives to this action because not listing this DPS as endangered, or listing it as threatened, would not provide adequate protection and would not be in keeping with the purpose of the Act or the definitions therein. This DPS consists of 9 small, relatively isolated

populations from which a combined total of fewer than 100 adults have been observed in recent surveys. Although all of the factors that have caused it to decline to this low level may never be known, the DPS is in immediate danger of extinction.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)). "Conservation" means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which protection under the Act is no longer necessary.

Due to the small number of populations, the mountain yellow-legged frog is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such

critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for this DPS of the mountain yellow-legged frog.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for this DPS of the mountain yellow-legged frog will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the mountain yellow-legged frog without further delay.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for this DPS of the mountain yellow-legged frog as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include requirements for Federal protection,

prohibitions against certain practices, and recovery actions. The Act provides for possible land acquisition/exchange and cooperation with the States. The protection required of Federal agencies and the prohibitions against certain activities involving listed species are discussed, in part, below. Listing of the southern California DPS as endangered will provide for the development of a recovery plan. Such a plan will bring together both State and Federal efforts for the mountain yellow-legged frog's conservation. The plan will establish a framework for cooperation and coordination among agencies in conservation efforts. The plan will set recovery priorities and estimate costs of various tasks necessary to accomplish them. It will also describe site-specific management actions necessary to achieve conservation and survival of the southern California DPS of the mountain yellow-legged frog.

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

Federal agencies expected to have involvement with section 7 regarding the southern California DPS of mountain yellow-legged frog include the U.S. Forest Service through its management activities and the U.S. Army Corps of Engineers through its permit authority under section 404 of the Clean Water Act. These agencies either administer lands containing the DPS or authorize, fund, or otherwise conduct activities that may affect the DPS.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part,

make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

It is the policy of the Service published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practical at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. If the DPS is eventually listed, we believe the following actions would not be likely to result in a violation of section 9:

Possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of dead specimens of this taxa that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxa to the list of endangered species.

Activities that the Service believes could potentially harm the southern California DPS of mountain yellow-legged frog and result in a violation of section 9 of the Act include, but are not limited to:

(1) Take of southern California mountain yellow-legged frogs without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken mountain yellow-legged frogs;

(3) Interstate and foreign commerce (commerce across State and international boundaries) and import/export (as discussed earlier in this section);

(4) Introduction of nonnative species that compete or hybridize with, or prey on, mountain yellow-legged frogs; and

(5) Destruction or alteration of mountain yellow-legged frog habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant

degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding; and

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting mountain yellow-legged frogs by mining, or other developmental or land management activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and habitat used by the species for foraging, cover, migration, and breeding.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of our Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 Northeast 11th Avenue, Portland, Oregon 97232-4181 (503/231-6241; FAX 503/231-6243).

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing these permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and/or for economic hardship.

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The distribution of resident rainbow trout in the mountains of southern California prior to the stocking programs of the California Department of Fish and Game;

(3) The location of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Additional information concerning the range, distribution, and population size of this species; and

(5) Current or planned activities in the subject area and their possible impacts on the southern California population of mountain yellow-legged frogs.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

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

References Cited

A complete list of all references cited herein are available upon request from the Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this document is Paul J. Barrett, Carlsbad Fish and Wildlife Office (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

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

PART 17—[AMENDED]

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

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

2. Section 17.11(h) is amended by adding the following, in alphabetical order under AMPHIBIANS, to the List of

Endangered and Threatened Wildlife to read as follows:

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

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
AMPHIBIANS							
* * * * *							
Frog, mountain yellow-legged.	<i>Rana muscosa</i>	U.S.A. (California, Nevada) including San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties.	U.S.A., southern California.	E	NA	NA
* * * * *							

Dated: December 10, 1999.
Jamie Rappaport Clark,
Director, U.S. Fish and Wildlife Service.
 [FR Doc. 99-33087 Filed 12-17-99; 11:48 am]
BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 991210333-9333-01; I.D. 111099C]

RIN 0648-AN37

Dolphin-Safe Tuna Labeling; Official Mark

AGENCY: National Marine Fisheries Service(NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement provisions of the International Dolphin Conservation Program Act (IDCPA) that pertain to the establishment of an official dolphin-safe mark. This rule proposes that mark. The Dolphin Protection Consumer Information Act (DPCIA), as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that may be used to label tuna products as "dolphin-safe." This rule will allow consumers to distinguish dolphin-safe tuna products using the official mark from non-dolphin-safe tuna products.

DATES: Comments on the proposed rule must be received on or before January 5, 2000.

ADDRESSES: Written comments should be sent to Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Comments also may be sent via facsimile, to (562) 980-4047. NMFS will not accept comments sent by e-mail or via Internet. A full color version of the proposed official mark may be found at the NMFS Southwest Region website at <http://swr.ucsd.edu/>.

FOR FURTHER INFORMATION CONTACT: Christopher Fanning, NMFS, Southwest Region, Sustainable Fisheries Division, (562) 980-4030 or J. Allison Rountt, NMFS, Southwest Region, Protected Resources Division, (562) 980-4020.

SUPPLEMENTARY INFORMATION:

Background

The DPCIA, 16 U.S.C. 1385, as amended by the IDCPA, requires the Secretary of Commerce to develop an official mark that can be used to label tuna products as "dolphin-safe." The IDCPA and the DPCIA became effective on March 3, 1999, when the Secretary of State certified to Congress that the Agreement on the International Dolphin Conservation Program had been adopted and was in force.

Official Mark

As discussed in the proposed rule to implement the IDCPA (64 FR 31806; June 14, 1999), the Secretary of Commerce considered the designation of a commonly used dolphin-safe logo as the official mark, but instead has decided to develop a unique logo as the official mark. This rule proposes a specific logo as the official mark.

The DPCIA establishes dolphin-safe standards applicable to tuna products

labeled with either the official mark or an alternative mark, (16 U.S.C. 1385(d)). The DPCIA does not mandate the use of the official mark nor does it prohibit the use of alternative marks. However, as set forth under paragraph (d)(3)(B) of the DPCIA, whenever a tuna product bears the official mark, it may not bear any other mark or label that refers to dolphins, porpoises, or marine mammals. The dolphin-safe labeling standards are set forth under 50 CFR 216.91 through 216.94. This proposed rule would codify the official mark at 50 CFR 216.96.

Public Comments Solicited

NMFS is soliciting comments on this proposed rule, including the proposed official mark (see **ADDRESSES**).

Classification

Executive Order 12866

This proposed rule has been determined to not be significant for purposes of E.O. 12866.

Regulatory Flexibility Act

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities since the IDCPA does not mandate the use of the official mark, and use of the official mark is discretionary. Thus there are no compliance costs associated with this proposed rule. As a result, a regulatory flexibility analysis was not prepared.