

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Ambrosia pumila</i> .....	* San Diego ambrosia	* U.S.A. (CA) Mexico	* Asteraceae .....	* E	* 727	* NA	* NA
*	*	*	*	*	*	*	*

Dated: June 14, 2002.  
**Marshall P. Jones, Jr.,**  
 Acting Director, U.S. Fish and Wildlife Service.  
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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; Determination of Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), determine endangered status for the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protection and recovery provisions afforded by the Act for this DPS.

**DATES:** This rule is effective August 1, 2002.

**ADDRESSES:** Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address (telephone 760/431-9440 and facsimile 760/431-9618).

**SUPPLEMENTARY INFORMATION:**

**Background**

The mountain yellow-legged frog is in the family of true frogs, Ranidae, which consists of frogs that are more closely tied to water bodies for breeding and

foraging than other frog or toad species. Mountain yellow-legged frogs were originally described by Camp (1917) as a subspecies of *Rana boylei*. Zweifel (1955) demonstrated that frogs from the high Sierra Nevada 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 treated the mountain yellow-legged frog as a full species, *Rana muscosa*, following Zweifel's treatment.

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) (Zweifel 1955, Jennings and Hayes 1994). The skin pattern of the mountain yellow-legged frog is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous with a mixture of sizes and shapes, to irregular 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). Folds are present on each side of the back (dorsolateral folds), but usually are not prominent (Stebbins 1985). The throat is white or yellow, sometimes mottled with dark pigment (Zweifel 1955). The belly and undersurface of the hind limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. Eye coloration consists of a gold-colored iris with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

The mountain yellow-legged frog is a near-endemic species to California (primarily restricted to California and a small area of Nevada), historically ranging in distribution from southern Plumas County in northern California to northern San Diego County in southern California. Within the range of the species, there are two major clades (a group of organisms that includes all descendants of one common ancestor) separated by a biogeographic break between the central and southern portions of the Sierra Nevada. These

two clades can be further divided into four subgroups, the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California (Macey *et al.* 2001). In the Sierra Nevada of California, the mountain yellow-legged frog ranges from northern Plumas County (G. Fellers *in litt.* 2000) to southern Tulare County (Jennings and Hayes 1994), at elevations mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the southern Sierra Nevada are isolated from the frogs in the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)).

Mountain yellow-legged frogs were historically documented from approximately 166 localities in creeks and drainages in the mountains of southern California (Jennings and Hayes 1994). Of these, an estimated 164 localities were from creeks and drainages in the San Gabriel, Big Bear, and San Jacinto Mountains of Los Angeles, San Bernardino, and Riverside Counties. The two remaining occurrences were documented on Palomar Mountain in San Diego County and were considered to represent an isolated population (Zweifel 1955). Currently the mountain yellow-legged frog is known from only seven locations in southern California in portions of the San Gabriel, San Bernardino, and San Jacinto Mountains (Backlin *et al.* 2002).

Localities of extant populations of mountain yellow-legged frogs in southern California are reported to range in elevation from approximately 370 m (1,200 ft) to 2,290 m (7,500 ft) (Stebbins 1985). Historical localities demonstrating 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)).

Southern California mountain yellow-legged frogs are diurnal (active during the daylight hours), highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Water depth, persistence, and configuration (*i.e.*, gently sloping shorelines and margins) appear to be important for mountain

yellow-legged frogs, allowing for shelter from predators along shores or in deeper waters, and habitat for breeding, foraging, egg-laying, thermoregulation (to regulate the body temperature through behavior), and overwintering (Jennings and Hayes 1994).

Juvenile and adult mountain yellow-legged frogs feed primarily on small, streamside insects such as beetles, flies, ants, bees, and similar small insects (Jennings and Hayes 1994). The coldest winter months are spent in hibernation, probably underwater or in crevices in the streambanks. Mountain yellow-legged frogs emerge from overwintering sites in early spring and breeding soon follows. Breeding activity typically begins in April at lower elevations, to June or July at upper elevations and continues for approximately a month (Zweifel 1955). Egg masses vary in size from as few as 15 eggs to 350 eggs per mass (Vredenburg *et al.*, in press), which is considered low, relative to a range of several hundred to several thousand for other true frogs such as the California red-legged frog (*Rana aurora draytonii*) (61 FR 25813, 66 FR 14626). Egg masses are normally deposited in shallow waters where they may be attached to rocks, gravel, vegetation, or similar substrates (U. S. Forest Service (USFS) 2002). As larvae develop, they tend to gravitate towards warmer waters to elevate body temperatures (Bradford 1984) which may facilitate larval and metamorphic development by allowing for a higher metabolic rate. Even with this behavior, "larvae apparently must overwinter at least two times for 6 to 9 month intervals before attaining metamorphosis because the active season is short and the aquatic habitat maintains warm temperatures for only brief intervals" (USFS 2002). Time to develop from fertilization to metamorphosis appears to be variable, ranging up to 3.5 years (Vredenburg *et al.*, in press; Zweifel 1955), with reproductive maturity reached from 3 to 4 years following metamorphosis (Zweifel 1955). Little is known about adult longevity, but the species is presumed to be long-lived due to adult survivorship (*i.e.*, observed survival of adults from year to year) (Mathews and Pope 1999, Pope 1999a in USFS 2002). Further, Pope (1999a in USFS 2002) suggests that mountain yellow-legged frogs may have strong site fidelity for wintering and summer habitats.

The decline of mountain yellow-legged frogs from more than 99 percent of their previously documented range in southern California (Jennings and Hayes 1994) may be part of a well-known larger pattern of native ranid frog extirpations 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 threatened California red-legged frog (61 FR 25813), the spotted frog (*R. pretiosa* and *R. luteiventris*), the Cascades frog (*R. cascadae*), and the threatened Chiricahua leopard frog (*R. chiricauhensis*) (67 FR 40789). Nowhere have the declines been more pronounced than in southern California, where, in addition to declines in mountain yellow-legged frogs, the California red-legged frog has been reduced to a few small remnant populations (61 FR 25813, 66 FR 14626) and the foothill yellow-legged frog (*R. boylei*) may be extirpated (Jennings and Hayes 1994).

The mechanisms causing the declines of western ranid frogs are not well understood and are certain to vary somewhat among species. The two most common and well-supported hypotheses for widespread extirpation of western ranid frogs are: (1) Past habitat destruction related to activities such as logging, mining, and habitat conversions for water development, irrigated agriculture, and commercial development (Hayes and Jennings 1986, 61 FR 25813); and (2) non-native predators and competitors such as introduced trout and bullfrogs (Hayes and Jennings 1986, Bradford 1989, Knapp 1996, Kupferberg 1997). However, in the case of the southern populations of mountain yellow-legged frogs, habitat destruction related to activities such as logging and commercial development does not appear to have been a significant factor in their precipitous decline because these activities are not prominent within mountain yellow-legged frog habitat in southern California. Overall, all of these factors, operating alone or in combination, may result in the direct extirpation of local populations of mountain yellow-legged frogs. Further, these factors may disrupt the natural cyclical population dynamics on the local and regional levels such that it may be difficult for populations to recover from localized impacts or extirpations.

Other environmental factors that may adversely affect mountain yellow-legged frogs and other amphibian populations over a wide geographic range include pesticides (Sparling *et al.* 2001), certain pathogens (Blaustein *et al.* 1994, Fellers *et al.* 2001), ultraviolet-B (beyond the visible spectrum) radiation (Blaustein *et al.* 2001, Belden and Blaustein 2002), or a combination of the above factors (Kiesecker and Blaustein 1995, Blaustein *et al.* 2001, Kiesecker *et al.*

2001). However, these factors, their interactions, and their effects on the decline of amphibian populations are not well understood (Wake 1998, Fellers *et al.* 2001). We believe that these environmental factors are still operating, and unless moderated or reversed, a high probability exists that mountain yellow-legged frogs may become extirpated in southern California in the foreseeable future. Consequently, additional research on the effects of the factors on amphibian populations is necessary. To that end, the Department of the Interior (DOI) has supported an initiative to fund research on the causes of amphibian declines (USFWS 2000).

Mountain yellow-legged frogs in southern California are found primarily on public land within the Angeles and San Bernardino National Forests. Therefore, the majority of mountain yellow-legged frog habitat is now protected or managed through management plans established for the Forests and sensitive species and habitat contained therein (refer to the Available Conservation Measures section for a further discussion of these measures). However, prior to the development of these management plans, dams or diversions were placed in many of the major streams flowing through the southern California mountains historically inhabited by mountain yellow-legged frogs. These dams and diversions alter natural hydrologic flow and may negatively impact mountain yellow-legged frog breeding and foraging habitat and further exacerbate the decline of populations in southern California.

#### Current Range and Status

Surveys in 2000 and 2001 by the U.S. Geological Survey (USGS) found mountain yellow-legged frogs in five small streams in the San Gabriel Mountains, one stream, City Creek, a tributary of the Santa Ana River, in the San Bernardino Mountains, and one stream in the upper reaches of the San Jacinto River system in the San Jacinto Mountains (Backlin *et al.* 2002, USFS 2002). The results from the USGS surveys differ somewhat from the distribution of mountain yellow-legged frogs described in the proposed listing rule (64 FR 71714). Areas where mountain yellow-legged frogs were found during the surveys and adult population estimates for each area are described below. Areas where frog populations were reported in the proposed rule, but were not found during recent surveys, are also noted.

*San Gabriel Mountains, Angeles National Forest, San Bernardino County:* Mountain yellow-legged frogs

were detected at 5 of 17 San Gabriel Mountains sites surveyed in 2001: Bear Gulch, Devil's Canyon, Little Rock Creek, South Fork of Big Rock Creek, and Vincent Gulch. No frogs were detected at Alder Gulch during a summer 2001 survey, but they were reported at this site in 1995 (Jennings 1995). Adult population estimates and 95 percent confidence intervals (CI) for the five sites were: 47 (95 percent CI = 22–108) for Bear Gulch, five (95 percent CI = 2–20) for Little Rock Creek, seven (95 percent CI = 1–7) for South Fork of Big Rock Creek, and 7 (95 percent CI = 1–7) for Vincent Gulch (Backlin *et al.* 2002). No population estimate was made for Devil's Canyon, but four adults were found (Backlin *et al.* 2002).

*San Jacinto Mountains, San Bernardino National Forest, Riverside County:* Only one site out of five surveyed in the San Jacinto Mountains in 2000 and 2001 was reported to be occupied (Backlin *et al.* 2002). One adult was found on Fuller Mill Creek during the five surveys conducted. No frogs were detected on the North Fork of the San Jacinto River from four surveys conducted in 2001, or in Dark Canyon during three surveys conducted in 2000 (Backlin *et al.* 2001). Mountain yellow-legged frogs were documented in Dark Canyon as recently as 1998 (Jennings 1999). Hall Canyon was not surveyed in 2000 and 2001. While frogs were not documented in this canyon during surveys in 1998 (Jennings 1999), eight adult mountain yellow-legged frogs and larvae were documented in 1995 (Jennings 1995).

*San Bernardino Mountains, San Bernardino National Forest, Riverside County:* Only one of 21 San Bernardino Mountains locations surveyed in 2001 had mountain yellow-legged frogs (Backlin *et al.* 2002). This site, the East Fork of City Creek, has an estimated adult population size of 13 (95 percent CI = 5–74) (Backlin *et al.* 2002). Similarly, the East Fork of City Creek was the only creek of the 15 locations surveyed in 2000 that was documented as supporting mountain yellow-legged frogs (Backlin *et al.* 2002).

Based on available recent information, it appears that mountain yellow-legged frogs have only been currently documented in seven creeks and drainages in the San Gabriel, San Jacinto, and San Bernardino Mountains of southern California, in contrast to the 166 documented historic localities. In 1994, Jennings and Hayes (1994) suggested that mountain yellow-legged frogs in the San Gabriel and San Jacinto Mountains (an estimated eight isolated localities) numbered fewer than 100 adult frogs. Their estimate was based on

a compilation of the results of visual surveys generally conducted on a single day, not on standard abundance estimation techniques. The current estimate of mountain yellow-legged frogs in southern California based on extrapolation from a mathematical formula is estimated to be approximately 79 adult frogs, not including direct observations in Devil's Canyon (4 adults in 2001) and Fuller Mill Creek (1 adult in 2001), in which estimates were not calculated (Backlin *et al.* 2002). We acknowledge, however, that some creeks may have small populations that were not detected by recent 2000 and 2001 surveys efforts by Backlin *et al.* (2001; 2002).

#### Distinct Vertebrate Population Segment

We evaluated populations of mountain yellow-legged frog according to the February 7, 1996, joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). Three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for addition to the lists of endangered and threatened wildlife and plants, reclassification, and removal from the lists and include: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's 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. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

*Discreteness:* The range of the mountain yellow-legged frog is divided by a natural geographic barrier, the Tehachapi Mountains, which geographically isolates frogs in the southern Sierra Nevada from those in the mountains of southern California. The distance of the geographic separation is about 225 km (140 mi). The geographic separation of the Sierra Nevada and southern California frogs was recognized in the earliest description of the species by Camp (1917), who treated frogs from the two localities as separate subspecies within the *R. boylei* group. He designated the Sierra Nevada frogs *R. b. sierrae* and the southern California frogs *R. b. muscosa*, based on geography and subtle morphological (outward appearance; structure and form) differences. Zweifel (1955) reevaluated the morphological evidence used by Camp and found it insufficient to warrant recognition of two subspecies.

Using a limited sample size, Ziesmer (1997) analyzed the calls of Sierra Nevada (Alpine and Mariposa Counties) ( $n = 86$  utterances) and southern California (San Jacinto Mountains, Riverside County) mountain yellow-legged frogs ( $n = 23$  utterances). The calls of Sierra Nevada frogs differed from southern California frogs in pulse rate, harmonic structure, and dominant frequency (Ziesmer 1997). Ziesmer (1997) concluded that the differences in calls supported the hypothesis that mountain yellow-legged frogs from the Sierra Nevada and southern California are separate species.

In addition, two different genetic analyses have been conducted that support the concept that mountain yellow-legged frog populations in southern California are different from those in the Sierra Nevada. As noted in the proposed listing rule (64 FR 71714), a previously unpublished allozyme study was used to compare mountain yellow-legged frogs from the central Sierra Nevada and southern California (Green *in litt.*, 1993). He found a fairly significant genetic difference between the two populations, but without frogs

from the southern Sierra Nevada for comparison, it was not clear whether the difference reflected two ends of a cline (a character gradient), or distinct populations. Thus, due to the small sample sizes, the results were interpreted cautiously. More recently, a phylogenetic analysis of mitochondrial DNA sequences was performed on *Rana muscosa* throughout its distribution (Macey *et al.* 2001). Mitochondrial DNA sequences provide a more robust analysis of relationships than the allozymic data (Macey *et al.* 2001). Macey *et al.* (2001) found that eight populations of mountain yellow-legged frogs form two major clades separated by a biogeographic break in the Sierra Nevada. The break occurs between Kings Canyon National Park and a region slightly north of Yosemite National Park (Macey *et al.* 2001). The northern clade consists of populations from the northern and central Sierra Nevada, while the southern clade contains populations from the southern Sierra Nevada and the San Gabriel, San Jacinto, and San Bernardino Mountains in southern California. The two major clades, or groups, within *R. muscosa* are estimated to have diverged about 2.2 million years ago (Macey *et al.* 2001).

The two major clades each contained two subgroups, suggesting at least four evolutionarily distinct units within this taxon (Macey *et al.* 2001). Macey *et al.* (2001) found statistical support for evolutionarily distinct populations from the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California mountains (San Bernardino, Los Angeles, and Riverside counties). The southern Sierra Nevada and southern California subgroups are estimated to have diverged about 1.4 million years ago (Macey *et al.* 2001).

The vocalization differences found by Ziesmer (1997) support the discreteness of southern California mountain yellow-legged frogs from the Sierra Nevada populations. The genetic study conducted by Macey *et al.* (2001) also strongly supports the conclusion that the population of mountain yellow-legged frogs in southern California is discrete. The results from these studies together with the geographic separation of the southern population from the rest of the populations in the Sierra Nevada satisfy 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 Population Segments (61 FR 4722).

**Significance:** One of the most striking differences between Sierran and southern California mountain yellow-legged frogs is the ecological setting

they each 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 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 Mountain study site, for example, was in Sequoia and Kings Canyon National Parks, at high elevations between 2,910 to 3,430 m (9,600 to 11,319 ft). The rugged canyons of the arid mountain ranges of southern California bear little resemblance to the alpine lakes and streams of the Sierra Nevada. The different ecological settings between mountain yellow-legged frogs in southern California and those in the Sierra Nevada distinguish these populations from each other.

The extinction of this southern group would be significant because it would substantially reduce the overall range to only the Sierra Nevada. The mountain yellow-legged frogs of southern California comprise the southern limit of the species' range, and the loss of the southern California frogs on the periphery of the species' range could have significant conservation implications. Peripheral populations may be genetically and morphologically divergent from central populations. As such, distinct traits found in peripheral populations may be crucial to the species, allowing adaptation to environmental change. Peripheral populations often are important for the survival and evolution of species and will often have high value for conservation (Lesica and Allendorf 1995).

Based on the differences between the ecological settings for the mountain yellow-legged frog in southern California (steep gradient streams) and the Sierra Nevada (high elevation lakes and slow moving portions of streams), elevation, and the importance of the southern California population to the entire range of this species, the mountain yellow-legged frogs inhabiting the mountains of southern California meet the significance criteria under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722).

#### Conservation Status

Based on our determination that the southern California population of mountain yellow-legged frogs meets the first two criteria for a distinct vertebrate population segment per our policy, discreteness and significance, we must evaluate its conservation status and

make a determination relative to the Act's standards for listing as endangered or threatened. Please refer to the Summary of Factors Affecting the Species for our discussion of the status of the species.

#### 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 population of the mountain yellow-legged frog pursuant to the Act. Accompanying the petition was supporting information related to the taxonomy, ecology, and past and present distribution of the species. We reviewed the petition, supporting documentation, and other information 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 administrative finding on the petition to list the southern California population of the mountain yellow-legged frog (62 FR 36481). In our finding, we discussed our determination that the petition presented substantial information indicating that listing of the species may be warranted and that we believed the southern California population to be a distinct vertebrate population segment.

Once we determined 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), we worked on higher priority listing actions before completing the 12-month administrative finding and proposed listing rule on December 22, 1999, to list this DPS of the mountain yellow-legged frog as endangered (64 FR 71714). The processing of the 12-month administrative finding and the proposed listing rule conformed with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114).

On May 19, 2000, we published a notice of reopening of the comment period in response to a request from the California Department of Fish and Game (CDFG) for additional time to obtain biological information regarding the mountain yellow-legged frog and to comment on the proposed rule (65 FR 31870). Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided by the Act. In August 2001, the Department of the

Interior reached an agreement in principal with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including the mountain yellow-legged frog (southern California DPS). The agreement was formalized in October 2001 (*Center for Biological Diversity, et al. v. Norton*, Civ. No. 01–2063 (JR) (D.D.C.)). The publication of the final rule to list the southern California distinct vertebrate population segment of the mountain yellow-legged frog complies with the terms of that court-approved settlement agreement.

Additionally, on February 10, 2000, we received a petition dated February 8, 2000, to list as endangered the Sierra Nevada population of the mountain yellow-legged frog as a distinct vertebrate population. The petition addresses the remainder of the entire species' range, in the Sierra Nevada from Tulare County, CA, in the south to Plumas County, CA, in the north. On October 12, 2000, we published an administrative 90-day finding indicating that the petition presented substantial information and that the petitioned action may be warranted (65 FR 60603), and we initiated a status review for the mountain yellow-legged frog. The results of this review will be addressed in our 12-month administrative finding on the petitioned action.

#### Summary of Comments and Recommendations

In the December 22, 1999, proposed rule (64 FR 71714), we requested all interested parties to submit factual reports or information that might contribute to development of this final rule during the 60-day public comment period which closed on February 22, 2000. We requested comments from appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties. We published public notices of the proposed rule in the Los Angeles Times in Los Angeles County on December 27, 1999, The Press-Enterprise in Riverside County on December 29, 1999, and The Sun in San Bernardino County on December 30, 1999, inviting the general public to comment. On February 7, 2000, we received a request for a public hearing; however, at a later date the same individual provided comments on the proposed rule and retracted the request for a public hearing. On May 19, 2000, we reopened the public comment period for an additional 30 days (65 FR 31870) to obtain biological information and to

receive further comments on the proposed rule.

During the two public comment periods, we received written comments from a total of 18 individuals or agencies. All commenters supported the listing of the mountain yellow-legged frog DPS in southern California, but several expressed concern over our discussion and analysis of the potential factors affecting the species.

#### Peer Review

In accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities (59 FR 34270), we solicited the expert opinions of six independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population status, and supporting biological and ecological information for the taxon under consideration for listing. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. All six peer reviewers responded and supported the listing of this taxon. Information and suggestions provided by the reviewers were incorporated or addressed as applicable.

Comments on the proposed listing rule and our responses are either summarized below or directly incorporated into this final rule:

*Comment 1:* A peer reviewer requested additional discussion of the potential effects of water projects in drainages where mountain yellow-legged frogs occur.

*Our Response:* Currently, we lack specific information to address adequately the effects of water projects in drainages on the mountain yellow-legged frog in this final rule. However, we recognize that these projects may affect the mountain yellow-legged frog and its habitat. We will continue to gather information and attempt to address this issue in the future.

*Comment 2:* One peer reviewer noted our statement that all nine known populations of southern California mountain yellow-legged frog occur on USFS lands may not be true because Fuller Mill Creek flows through private property in the community of Pinewood.

*Our Response:* We have made that correction in this final rule. As one of the conservation measures for the mountain yellow-legged frog, the USFS identified a portion of the private land along Fuller Mill Creek (approximately 24 hectares (ha) (60 acres (ac)) for acquisition (USFWS 2001). In January

2001, the USFS acquired 97 ha (240 ac) of private land along Fuller Mill Creek in Pinewood (Regelbrugge *in litt.* 2002). While this land acquisition included the original 24 ha (60 ac) targeted, along with additional mountain yellow-legged frog habitat, portions of the creek that contain suitable, occupied habitat remain under private ownership.

*Comment 3:* One commenter requested that future proposals of critical habitat undergo a public comment period similar to the proposed listing.

*Our Response:* Pursuant to the Act and implementing regulations, we are required to solicit public comments on proposed rulemakings, including proposed critical habitat designations.

*Comment 4:* One commenter responded that there is relatively little information on the life history of stream-dwelling mountain yellow-legged frog populations, and our conclusion in the proposed listing rule that wherever rainbow trout (*Oncorhynchus mykiss*) and mountain yellow-legged frogs co-occur, trout are likely to eliminate mountain yellow-legged frogs was unsubstantiated, because the data was collected from high elevation lakes in the Sierra Nevada.

*Our Response:* In our proposed listing rule, we stated that trout may keep populations of mountain yellow-legged frogs low and limit dispersal. Although all studies that have concluded trout negatively affect the distribution of mountain yellow-legged frogs were conducted on lakes and ponds in the Sierra Nevada (Bradford 1989, Knapp 1996, Knapp and Matthews 2000), the inference that trout in southern California streams would have the same or similar adverse effects on mountain yellow-legged frog populations is strong and should not be overlooked. In these studies, it was documented that nonnative trout may be the most severe threat affecting mountain yellow-legged frogs (Backlin *et al.* 2001) by predating larvae and metamorphs (Hays and Jennings 1986, Bradford 1989). Furthermore, research has shown adverse effects of trout on frog tadpoles in a stream-setting (Rattlesnake Creek) within the Santa Ynez Mountains (Cooper *et al.* 1986). Cooper *et al.* (1986) stated that their experiments showed that trout eliminated treefrog (*Hyla* spp.) tadpoles.

We are currently funding a study through section 6 of the Act, to examine the natural history of the southern California DPS and interactions with trout.

*Comment 5:* One commenter stated the proposed rule unnecessarily focused

on potential public impacts, and was worried that as a result, the USFS would respond to the final listing with forest closures that are not warranted. The commenter noted human activities such as day use, hiking and camping were being singled out in the proposed rule.

*Our Response:* Although we did not specifically identify recreational activities as a significant factor in the precipitous decline of the southern California DPS of mountain yellow-legged frog, the few remaining occurrences of this species in southern California are now at risk of extinction. Any activity that results in disturbance to the species or which may harm eggs, tadpoles or adult frogs could negatively affect the continued survival of this DPS. We have conferred with the USFS on their activities which may affect the mountain yellow-legged frog and have identified actions to prevent impacts to the species (USFWS 2001). The small number of mountain yellow-legged frogs in southern California occur in a few stream reaches within the Angeles National Forest (ANF) and San Bernardino National Forest (SBNF). We believe that actions undertaken by the USFS to reduce impacts to this species on USFS lands in southern California will have a limited effect on current recreational activities within the Angeles and San Bernardino National Forests.

*Comment 6:* One peer reviewer indicated that the recent genetic research conducted by Macey *et al.* (2001) suggested that the southern DPS of the mountain yellow-legged frog is in fact a separate species instead of a DPS, and that he had submitted a paper for

review concerning this proposed taxonomic change.

*Our Response:* In this final rule, we rely on the results of the recent genetic study by Macey *et al.* (2001) as further evidence that the southern populations of the mountain yellow-legged frog meet the policy definition of a distinct vertebrate population segment. While the results of this study provide substantial information concerning the taxonomy and evolutionary history of the mountain yellow-legged frog, Macey *et al.* (2001) do not suggest the four subgroups constitute separate species. We appreciate the information concerning the proposed taxonomic changes; and look forward to reviewing this new information following publication in a peer-reviewed journal.

**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 list of endangered and threatened species. A species may be determined to be endangered or threatened 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 discussed below:

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

The seven remaining occurrences of the southern California DPS of mountain yellow-legged frog occur

within three drainages; five are within a drainage in the San Gabriel Mountains, one population inhabits a drainage in the San Bernardino Mountains, and one is in the San Jacinto Mountains. Most of the known locations of this DPS occur on lands administered by the USFS. The extremely limited number and small size of the remaining populations makes this DPS of mountain yellow-legged frog particularly vulnerable to extirpation resulting from localized habitat alteration or degradation, and stochastic (random, naturally occurring) events such as fire or drought (Backlin *et al.* 2002).

Alteration or degradation of habitat for this DPS within ANF and SBNF could result from recreational activities including hiking, mountain climbing, camping, swimming, stocking of trout for fishing, and suction dredge mining for gold; or other human-related impacts including release of toxic or hazardous materials into stream reaches inhabited by the DPS (Jennings 1995, Backlin *et al.* 2002, USFS 2002). In areas occupied by this DPS, human use in and along streams can disrupt the development, survivorship, and recruitment of eggs, larvae, and adult frogs (Jennings 1995; Stewart *in litt.* 1995), and can change the character of a stream and its bank and associated vegetation in ways that make whole sections of a stream less suitable for the species.

The following table identifies known recreational activities or other factors that may affect one or more of the remaining populations of the southern California DPS of mountain yellow-legged frog.

National Forest	Location of population	Activity
ANF .....	South Fork, Big Rock Creek—Mojave .....	Trout stocking.
ANF .....	Little Rock Creek—Mojave .....	Trail use; mountain climbing; vehicle travel on Highway 2.
ANF .....	Bear Gulch—East Fork, San Gabriel .....	Suction dredge mining for gold; recreation (e.g., hiking).
ANF .....	Devil's Canyon—West Fork, San Gabriel .....	Recreation; trout stocking.
ANF .....	Vincent Gulch—East Fork, San Gabriel .....	None.
SBNF .....	East Fork City Creek—City Creek .....	Vehicle travel on highway 330; wildfire due to buildup of fuels; introduction of non-resident trout.
SBNF .....	Fuller Mill Creek—Mill Creek .....	Picnicking; trout stocking; wildfire concern.

Suction dredge mining for gold has occurred in a portion of the East Fork, San Gabriel River within the Sheep Mountain Wilderness Area. The dumping of trash and toxic materials (soap, motor oil, mercury) has also occurred in this area. (Jennings 1995). Some of the habitat effects of suction dredging on streams are described by Harvey (1986), who found that dredging

may locally alter substrates and change habitat for fish and invertebrates. Consequently, disturbance to streambed substrates and water quality resulting from extensive suction dredging activity at or near a mountain yellow-legged frog breeding site could have harmful effects on eggs and developing larvae. Dumping of trash and toxic materials can degrade

water quality, also with adverse effects on eggs and developing larvae.

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

Numerous museum specimens from many localities document that mountain yellow-legged frogs from the southern DPS have been collected for scientific

purposes for decades (Jennings and Hayes 1994). Because the DPS has declined precipitously, resulting in a limited number of small populations, little scientific collecting of the southern DPS would likely be authorized. Collecting for scientific or recreational purposes, if it did occur, could seriously increase the probability of extirpation of any of the remaining populations, potentially reducing the ability of the DPS to survive and recover.

### C. Disease or Predation

Predation by introduced fish, primarily rainbow trout, 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 over several years has shown conclusively that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada due to predation of tadpoles and other life stages (Bradford 1989, Knapp 1996, Knapp and Matthews 2000). 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 local extirpations is essentially impossible. This mechanism is sufficient to explain the extirpation of Sierra Nevada mountain yellow-legged frogs from the majority of sites they once inhabited. Alone or in combination with other factors, introduced trout may have contributed to the widespread decline of the southern DPS as well.

Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and until recently, trout were routinely released by California Department of Fish and Game in Dark Canyon and 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. However, the remaining frog occurrences in these streams are almost all in the small headwater sections where barriers restrict upstream movement of trout. While there have been no studies that specifically looked at the interaction between trout and stream-dwelling mountain yellow-legged frogs in southern California, Cooper *et al.* (1986) found trout eliminated stream-dwelling treefrog (*Hyla* spp.) tadpoles in Rattlesnake Creek within the Santa Ynez Mountains.

Wherever the two species co-occur, trout are likely to heavily impact mountain yellow-legged frog populations by eliminating or keeping populations low and limiting dispersal (Bradford 1989, Bradford *et al.* 1993). Knapp and Matthews (2000) suggested that mountain yellow-legged frog populations co-occurring with trout generally represent "sink" populations (a population in which the mortality rate exceeds the birth rate). Consequently, co-occurrence of mountain yellow-legged frogs and trout is insufficient evidence that trout have had relatively minor effects on frogs, because the persistence of these frog occurrences is likely dependent on immigration from source populations (Knapp and Matthews 2000). The widespread occurrence of introduced trout and continued releases in the mountains of southern California may make it very difficult to recover the DPS.

Another introduced predator that could have effects on the DPS similar to those of the trout, but 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 arroyo toads (59 FR 64859). Bullfrogs are now widespread in southern California and occur in many drainages formerly 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 likely cause them to become locally abundant. In areas where mountain yellow-legged frogs occur, an increase of bullfrogs could further isolate the remaining populations; thereby potentially reducing the ability of the DPS to survive and recover.

Bradford (1991) documented the loss of a Sierra Nevada population of mountain yellow-legged frogs due to the combined effect of "red-leg" disease (caused by the freshwater 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 *Batrachochytrium dendrobatidis*. Chytrid fungus may be seriously affecting amphibians by attacking the mouthparts of tadpoles affecting their ability to feed. Chytrid fungus occurs in many places around the world, and has recently been discovered on larval and

recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada (Fellers *et al.* 2001). Because of the small and isolated nature of the remaining occurrences in southern California, disease could be significantly detrimental.

### 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) State laws, including the California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (2) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; and (3) local land use processes and ordinances.

The State of California considers the mountain yellow-legged frog a species of special concern, but it is not listed as a threatened or endangered species under the CESA. Consequently, the species receives no protection under CESA. 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 CDFG, however, the protection afforded by this regulation does not address the significant threats to the DPS presented by such factors as habitat alteration or predation by nonnative species.

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 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 elimination of endangered species or their habitats. Protection of listed species through CEQA is, therefore, at the discretion of the lead agency involved. 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.

The arroyo toad (*Bufo californicus*), a federally listed endangered species, is present in the San Gabriel Mountains. Because the two species occupy different areas and habitats 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, we believe there is limited benefit to the mountain yellow-legged frog from the presence of the arroyo toad.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act will afford some protection to mountain yellow-legged frogs where they occur in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States.

The U.S. Forest Service's Angeles and San Bernardino National Forests manage lands containing all known locations of mountain yellow-legged frogs in southern California. The USFS has included mountain yellow-legged frogs on its Region 5 list of sensitive species as of June 8, 1998. The USFS has been formulating a conservation assessment and strategy for the mountain yellow-legged frog in southern California in a cooperative effort with other agencies, but this effort is still in progress (USFS 2002). As noted in the discussion of the factors

above, the presence of introduced trout on USFS lands is believed to be a serious threat to the mountain yellow-legged frog. Additionally, because the DPS has been reduced to small isolated remnant populations, recreational activities (e.g., bathing, camping, hiking, etc.) occurring on USFS lands may threaten the remaining frogs. The perilous status of the mountain yellow-legged frog reflects the overall 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*

The southern California DPS of mountain yellow-legged frog is considered at high risk of extirpation because very few locations remain, the locations are isolated from one another, and each location likely contains only a small number of frogs. Few populations and restricted habitat make the southern California DPS of mountain yellow-legged frog susceptible to extinction or extirpation from all or a portion of its range due to random events such as fire, flood or drought. In addition, small population size may increase the susceptibility of the remaining mountain yellow-legged frog populations in southern California to extirpation from random demographic, environmental and/or genetic events (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997, Primack 1998). Finally, disruption of source population and dispersal dynamics (e.g., source populations that provide individuals that can disperse to other populations or colonize new areas which assists in the stability and recovery of the species) may increase the risk of extinction of the southern California populations of the frog (Noss and Cooperrider 1994). These effects are discussed briefly below.

Unpredictable events such as fire could potentially eliminate entire populations of this DPS (Stewart *in litt.* 1995, Jennings 1995). Several of the remaining populations of mountain yellow-legged frog in southern California occur within areas where vegetation and fuel levels have increased. The increased fuel levels could lead to fires that burn more intensely, removing most of the vegetation which would affect the amount of available stream shade and could increase sedimentation within a stream channel due to exposed soils (USFS 2002).

Mountain yellow-legged frog populations in the southern California

DPS are also at risk from floods and drought. Unlike the lake environments utilized by the Sierra Nevada populations of the species, the streams inhabited by the southern California DPS flow through narrow canyons that provide little opportunity for off-channel refuge for the species during flood events (USFS 2002). Stewart (*in litt.* 1995) believed that flooding during the winter of 1969 was a major factor in the disappearance of mountain yellow-legged frogs from Evey Canyon in the San Gabriel Mountains.

Mountain yellow-legged frogs are almost always found in or immediately adjacent to water (USFS 2002). Periods of prolonged drought could have a significant effect on one or more of the remaining populations of this DPS as a result of reduced reproduction and reproductive success (i.e., mortality of eggs and tadpoles) (USFS 2002).

Demographic events that may put small populations at risk involve chance variation in age, sex ratios, and other population characteristics, which can change birth and death rates (Shaffer 1981, 1987; Lande 1988; Noss and Cooperrider 1994; Meffe and Carroll 1997). A limited survey conducted by Jennings (1995) found skewed sex ratios in the populations of mountain yellow-legged frogs in the San Gabriel Mountains.

Small, isolated populations are also vulnerable to genetic drift (random changes in gene frequencies) and inbreeding (mating among close relatives). Genetic drift and inbreeding may lead to reductions in the ability of individuals to survive and reproduce (i.e., reductions in fitness) in small populations. In addition, reduced genetic variation in small populations may make any species less able to successfully adapt to future environmental changes (Shaffer 1981, 1987; Noss and Cooperrider 1994, Primack 1998).

Finally, we believe that the connectivity of populations within this DPS has been substantially reduced compared to the recent past. Loss of one or more of the remaining populations within the southern California DPS would cause the remaining populations to become even more isolated from one another, thereby reducing the likelihood of its long-term survival and recovery.

We have evaluated the best available scientific and commercial information regarding the status of, and threats to, the southern California DPS of mountain yellow-legged frog in determining its eligibility for listing pursuant to the Act. Based on our evaluation, we determine that listing of the southern California DPS of

mountain yellow-legged frog as endangered, under the Act, is warranted and appropriate.

#### 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.

Critical habitat designation directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Due to the small number and sizes 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 location information. However, we have examined the evidence available for the mountain yellow-legged frog and have not found significant 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 designating critical habitat is prudent. In the case of the southern California DPS of mountain yellow-legged frog, 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 the southern California DPS of the mountain yellow-legged frog.

However, the 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 designations and other listing actions, while allowing us to put in place protections needed for the conservation of the southern California DPS of mountain yellow-legged frog without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

#### 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 of the mountain yellow-legged frog as endangered will provide for recovery planning including the development of a recovery plan if it will promote the conservation of the DPS. 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, permit, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its designated critical habitat. If a Federal action may affect a listed species or its designated critical habitat, the responsible Federal agency must enter into consultation with us.

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

In 2001, the Service issued its biological and conference opinions on the Land and Resource Management Plans (LRMP) for the four southern California National Forests (USFWS 2001) addressing activities on the

Angeles and San Bernardino National Forests. The southern California DPS of mountain yellow-legged frog, proposed for listing as endangered, was included in a conference opinion. Measures contained in a conference opinion are advisory in nature.

Conservation recommendations for the southern California DPS of mountain yellow-legged frog included: (1) Installation of signage along trails adjacent to areas occupied by the DPS to encourage the public to remain on designated trails; (2) removal of picnic equipment or campsites (barbecue pits, picnic tables) adjacent to areas occupied by the DPS; (3) organization of workshops to educate campground permittees about this DPS of mountain yellow-legged frog; (4) acquisition of habitat for the DPS within private inholdings; (5) assignment of additional patrols to prevent illegal suction dredge mining within the Sheep Mountain Wilderness Area of Angeles National Forest; and (6) relocation of a trail adjacent to an area occupied by the DPS within Little Rock Canyon.

The conference opinion addressing the southern DPS of mountain yellow-legged frog may be adopted as a biological opinion following the listing of this DPS under the Act, if we review the proposed action and determine there have been no significant changes in the action as planned or in the information used during the conference. If we determine the conference opinion may be adopted as the biological opinion, no further consultation pursuant to section 7 will be necessary, unless: (1) The amount of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect the species or critical habitat in a manner and to an extent not considered in the conference opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the species or critical habitat that was not considered in the conference opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action.

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 under section 9 of the Act, 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 listing a species pursuant to the Act on proposed and ongoing activities within the species' range. We believe the following actions would not likely 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 taxon that were collected prior to the date of publication in the **Federal Register** of the final regulation adding this taxon to the list of endangered species.

Activities we believe will 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 non-native species that compete or hybridize with, or prey on, mountain yellow-legged frogs;

(5) Destruction or alteration of mountain yellow-legged frog habitat by suction 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) Discharging or dumping 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, Carlsbad Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT*). 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 NE. 11th Avenue, Portland, OR 97232-4181 (Telephone 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.

#### **National Environmental Policy Act**

We have 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).

#### **Paperwork Reduction Act**

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018-0094, which expires July 31, 2004. This rule does not alter that information collection requirement. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### **References Cited**

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

**Authors**

The primary author of this final rule is the Carlsbad Fish and Wildlife Office (see ADDRESSES).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

For the reasons given in the preamble, we 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 (southern California DPS).	<i>Rana muscosa</i> .....	U.S.A. (California, Nevada).	U.S.A., southern California.	E	728	NA	NA
*	*	*	*	*	*		*

Dated: June 20, 2002.  
**Steve Williams,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 02–16371 Filed 7–1–02; 8:45 am]  
**BILLING CODE 4310–55–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 020508113–2151–02; I.D. 090501D]

RIN 0648–AP12

**Fisheries of the Northeastern United States; Atlantic Mackerel, Squid and Butterfish Fisheries; Framework Adjustment 2**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement measures contained in Framework Adjustment 2 (Framework 2) to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This action extends the limited entry program for the *Illex* squid fishery for an additional year; allows for the roll-over of the annual specifications for these fisheries (with the exception of total allowable landings of foreign

fishing (TALFF)) in the event annual specifications are not published prior to the start of the fishing year; and allows *Loligo* squid specifications to be set for up to 3 years, subject to annual review. NMFS has disapproved the proposed framework measures to modify the *Loligo* squid overfishing definition and control rule; and to allow *Illex* squid vessels an exemption from the *Loligo* squid trip limit during an August or September closure of the directed *Loligo* squid fishery. This action is necessary and is intended to further the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective August 1, 2002, except that the amendment to § 648.4 is effective on June 27, 2002.

**ADDRESSES:** Copies of Framework 2, including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Final Regulatory Flexibility Analysis (FRFA), are available on request from Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Dover, DE 19904–6790. The EA/RIR/IRFA is accessible via the Internet at <http://www.nero.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail [Paul.H.Jones@noaa.gov](mailto:Paul.H.Jones@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In 1997, Amendment 5 to the FMP established a

limited entry program for the *Illex* squid fishery in response to a concern that fishing capacity could otherwise expand to overexploit the stock. At the time the program was established, there were concerns that the capacity of the limited entry vessels might prove, over time, to be insufficient to fully exploit the annual quota. In response to this concern, a 5–year sunset provision was placed on the *Illex* squid limited entry program, and it was scheduled to end July 1, 2002. However, in recent years the limited entry fleet has demonstrated that it has sufficient capacity to harvest the long-term potential yield from this fishery. The Mid-Atlantic Fishery Management Council (Council) must prepare an amendment to the FMP to evaluate whether or not the limited entry program should be extended permanently. In the meantime, this action extends the *Illex* squid moratorium through July 1, 2003, to prevent overcapitalization while the amendment is being prepared and considered by the Council. This extension complies with the criteria in section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act. The extension will allow the Council additional time to consider long-term management for the *Illex* squid fishery, including the limited entry program. Vessels that took small quantities of *Illex* squid in the past may continue to do so under the incidental catch provision of the FMP.