



# Federal Register

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## Part II

### Department of the Interior

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Fish and Wildlife Service

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50 CFR Part 17

**Endangered and Threatened Wildlife and  
Plants; Proposed Designation of Critical  
Habitat for the Southern California  
Distinct Vertebrate Population Segment of  
the Mountain Yellow-Legged Frog (*Rana  
muscosa*); Proposed Rule**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU30

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the endangered 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). We have determined that approximately 8,770 ac (3,549 ha) of land containing features essential to the conservation of the mountain yellow-legged frog exist in Los Angeles, San Bernardino, and Riverside Counties, CA. We are proposing to designate approximately 8,283 acres (ac) (3,352 hectares (ha)) of streams and riparian areas as critical habitat within 3 units in southern California, further divided into subunits: Unit 1 (7 subunits) in the San Gabriel Mountains (Los Angeles and San Bernardino counties); Unit 2 (3 subunits) in San Bernardino Mountains (San Bernardino County); and Unit 3 (4 subunits) in the San Jacinto Mountains (Riverside County). Lands being proposed as critical habitat are under Federal, local/state, and private ownership; no tribal lands are included in this proposed designation. This proposed designation includes areas currently known to be occupied by the southern California DPS of the mountain yellow-legged frog, as well as several areas that were historically occupied, but are currently unoccupied. We are proposing to exclude critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Area under section 4(b)(2) of the Act.

**DATES:** We will accept comments from all interested parties until November 14, 2005. We must receive requests for public hearings, in writing, at the

address shown in the **ADDRESSES** section by October 28, 2005.

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

1. You may submit written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011.

2. You may hand-deliver written comments to our Office, at the above address.

3. You may send comments by electronic mail (e-mail) to [FW1CFWO\_MYLFPCH@fws.gov]. Please also include "Attn: mountain yellow-legged frog" in your e-mail subject header and see the Public Comments Solicited section below for file format and other information about electronic filing.

1. You may fax your comments to (760) 431-9624.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011 (telephone (760) 431-9440).

**FOR FURTHER INFORMATION CONTACT:** Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011, (telephone (760) 431-9440; facsimile (760) 431-9624).

**SUPPLEMENTARY INFORMATION:****Public Comments Solicited**

We intend 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) Specific information on the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog: *i.e.*, the locations of known occurrences of individuals or subpopulations, the dispersal behavior and distances of adults, juveniles and tadpoles, the developmental time of tadpoles and their habitat requirements throughout the year, genetic information in the mountain yellow-legged frog, recreation impacts, impacts of non-native predators;

(2) Specific information as to whether the physical and biological features we have identified essential to its conservation are accurate and whether they exist on those areas we have identified as occupied;

(3) If those unoccupied areas proposed to be designated are all essential to the conservation to the species;

(4) The proposed exclusion of habitat on non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) under section 4(b)(2) of the Act. Please provide information demonstrating the conservation benefits of including these lands exceed the benefits of excluding these lands. If the Secretary determines the benefits of including the lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

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

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

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see ADDRESSES*). Please submit Internet comments to [FW1CFWO\_MYLFPCH@fws.gov] in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: mountain yellow-legged frog" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760/431-944. Please note that the Internet address [FW1CFWO\_MYLFPCH@fws.gov] will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

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

### **Designation of Critical Habitat Provides Little Additional Protection to Species**

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

In this current proposed critical habitat rule, we have determined that the identification and conservation of unoccupied habitat is necessary for the long-term persistence of the mountain yellow-legged frog. In the case of this species, because we have determined it necessary to propose critical habitat in unoccupied areas, the critical habitat designation will provide a benefit to the species.

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

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of

critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, of the 1,253 listed species in the U.S. under the jurisdiction of the Service, only 471 species (38 percent) have designated critical habitat. We address the habitat needs of all 1,253 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process; the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. In response, on December 9, 2004, the Director issued guidance to be used in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of critical habitat's benefits.

### **Procedural and Resource Difficulties in Designating Critical Habitat**

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

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing

determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

### **Background**

Please refer to the final listing rule published in the **Federal Register** on July 2, 2002 (67 FR 44382) for a detailed discussion on the taxonomic history and description of the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*), hereafter referred to as the mountain yellow-legged frog. It is our intent in this document to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing.

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 are diurnal frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Many of the streams in which they historically occurred have a relatively steep gradient with large boulders in the streambeds (Stebbins 1951).

Historically, mountain yellow-legged frogs in southern California were documented over a wide elevation range, from 1,214 ft to 7,513 ft (370 m

to 2,290 m) (Jennings and Hayes 1994a), and in a wide variety of wetland habitats, including lakes, rivers, creeks, ponds, and marshes (Zweifel 1955, Mullally 1959, Schoenherr 1976, Jennings 1994a, b, Vredenburg *et al.* 2005).

Mountain yellow-legged frogs historically occurred in streams on both the desert and coastal slopes of the San Gabriel, San Bernardino, San Jacinto, and Palomar Mountains in Los Angeles, San Bernardino, Riverside, and San Diego counties (Zweifel 1955). Despite the close proximity of the Transverse Mountain Ranges to highly populated areas such as Los Angeles, Riverside, and San Diego, the vertebrate fauna has been relatively little studied, particularly in the San Gabriel Mountains (Jennings 1994). Over 40 years ago, Schoenherr (1976) and Zweifel (1955) described the distribution of frogs in the region, but their studies were not encompassing; *e.g.* in the San Gabriel Mountains, their works were conducted in the southern and western areas. Little to no observations were collected in the 1980's, but during the 1990's, Jennings (1993, 1994, 1995, 1998, 1999) surveyed for the mountain yellow-legged frog extensively in the region. This work was subsequently resumed by USGS, who has conducted annual surveys for mountain yellow-legged frog in southern California since 2000.

In the most recent USGS survey report on the mountain yellow-legged frog in southern California, Backlin *et al.* (2004) used historical records to compare the locations of where frogs previously were found to the locations of the current, extant populations and concluded that between the 1900's and today, it is evident that the mountain yellow-legged frog has disappeared from nearly all of its former range in southern California. Between 2000 and 2003, USGS, USFS, and CDFG conducted extensive surveys for mountain yellow-legged frogs at their historical locations and other areas with suitable habitat. Backlin *et al.* (2004) gave the overall survey results: mountain yellow-legged frogs are currently known to occur in only 8 areas in southern California, and all were located in isolated headwater streams (Backlin *et al.* 2004). Most of these populations occur above (upstream of) a barrier, natural or artificial, which limits upstream movement by fish (cf. Backlin *et al.* 2004; A. Backlin, USGS, *pers. comm.* 2005). In the Palomar Mountains, where mountain yellow-legged frog previously occurred, no recent, exhaustive surveys have been conducted (Backlin *et al.* 2004). Additional surveys need to be

conducted in areas with suitable aquatic habitat that includes streams, creeks and pools, but also springs, seeps marshes, and small tributaries, so that undocumented populations are not inadvertently overlooked (Backlin *et al.* 2004).

The final listing rule (67 FR 44382) described the mountain yellow-legged frog as occupying five streams in the San Gabriel Mountains: (1) Bear Gulch-East Fork San Gabriel River (referred to in this rule as San Gabriel River, East Fork, Bear Gulch); (2) Vincent Gulch-East Fork San Gabriel River (referred to in this rule as San Gabriel River, East Fork, Vincent Gulch); (3) South Fork-Big Rock Creek (referred to in this rule as Big Rock Creek, South Fork); (4) Little Rock Creek, and (5) Devil's Canyon-West Fork San Gabriel River. The final listing rule also recognized one population within the San Bernardino Mountains (City Creek-East Fork), and one population in the San Jacinto Mountains (Fuller Mill Creek (referred to in this rule as San Jacinto River, North Fork, Fuller Mill Creek)). The mountain yellow-legged frog is believed to be extirpated from Palomar Mountain (Jennings and Hayes 1994a).

In the proposed and final rules listing the southern California DPS of the mountain yellow-legged frog as endangered, we identified additional streams where the DPS had previously been known to occur, but were not found in surveys conducted in 2001 (64 FR 71714; 67 FR 44382). These streams where mountain yellow-legged frogs had been observed included: Alder Gulch-East Fork San Gabriel River in the San Gabriel Mountains (referred to in this rule as San Gabriel River, East Fork, Alder Gulch), where they were last seen in 1998 (Jennings 1998); the North Fork of San Jacinto River, last seen in 1999; Hall Canyon (referred to in this rule as Indian Creek at Hall Canyon), last seen in 1995; and Dark Canyon in the San Jacinto Mountains, where frogs have been observed in 2005. The population in Dark Canyon was recently rediscovered in 2003 by biologists from the California Department of Fish and Game (CDFG) and the San Bernardino National Forest (Backlin *et al.* 2004). Prior to the rediscovery of this population, the last observation of the mountain yellow-legged frog in Dark Canyon was in 1999.

Barton Creek and Day Canyon were known to be occupied by the mountain yellow-legged frog prior to the listing in 2002, but were not discussed in either the proposed or final listing rules. Approximately 50 individual adults were observed in Barton Creek, East Fork in 1993 (CNDDDB 2005), when

water flowed well in the creek (R. McKernan, dir. San Bernardino County Museum, *pers. comm.* 2005). Mountain yellow-legged frogs were first observed in Day Canyon in 1959 (Los Angeles County Museum), and re-sighted there in 1994 (CNDDDB 2005). In 2003, the USGS conducted a single visit survey of a portion of Day Canyon, and did not locate any mountain yellow-legged frogs, but did note the occurrence of rainbow trout (*Onchorhynchus mykiss*) (Backlin *et al.* 2004).

In summary, we identified the following streams as occupied at the time of listing: (a) *In the San Gabriel Mountains*: the East Fork of the San Gabriel River including Bear Gulch (67 FR 44382), Prairie Creek (64 FR 71714), Vincent Gulch (64 FR 71714, 67 FR 44382), Alder Creek—East Fork (64 FR 71714; referred to here as Alder Gulch), Devil's Canyon (64 FR 71714, 67 FR 44382), Big Rock Creek (67 FR 44382) and Little Rock Creek (64 FR 71714, 67 FR 44382); (b) *In the San Bernardino Mountains*: the East Fork, City Creek (64 FR 71714, 67 FR 44382) which is currently assumed to be unoccupied; (c) *In the San Jacinto Mountains*: four tributaries in the upper reaches of the North Fork, San Jacinto River on Mount San Jacinto: Dark Canyon (64 FR 71714, 67 FR 44382), Hall Canyon (64 FR 71714, 67 FR 44382; referred to here as Indian Creek at Hall Canyon), Fuller Mill Creek (64 FR 71714, 67 FR 44382), and the main North Fork, San Jacinto River (64 FR 71714).

Subsequent to listing the species, we identified the following additional streams as also occupied: (a) *In the San Gabriel Mountains*: the East Fork of the San Gabriel River: the main stem of the San Gabriel River, East Fork at the confluence of Fish Fork to below the confluence of Iron Fork, the lower reaches of the tributaries Iron Fork and Fish Fork, and Day Canyon in San Bernardino National Forest; (b) *in the San Bernardino Mountains*: the East Fork of Barton Creek (San Bernardino National Forest), and the East Fork of City Creek, and; (c) *in the San Jacinto Mountains*: an unnamed side tributary of the North Fork of the San Jacinto River in Dark Canyon.

This rule also proposes some streams that were historically occupied and currently assumed to be unoccupied, because we believe these streams are essential to the conservation of the species. These are: (a) *In the San Gabriel Mountains (Angeles National Forest)*: Bear Creek (located north of the West Fork of the San Gabriel River), and the East Fork of Iron Fork, a tributary to the East Fork of the San Gabriel River; (b) *In the San Bernardino Mountains*: the

upper reaches of the North Fork of Whitewater River (San Bernardino National Forest); and (c) *In the San Jacinto Mountains (San Bernardino National Forest)*: Tahquitz Creek (uppermost reaches, including Willow Creek tributary), and Andreas Creek (uppermost reaches) both within the San Jacinto Wilderness area.

As discussed in the final listing rule (67 FR 44382), Jennings and Hayes (1994) estimated that mountain yellow-legged frogs have been extirpated from more than 99 percent of their previously documented range in southern California. The mechanisms causing the declines of ranid frogs in the western United States 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). There is now a growing body of evidence that the mountain yellow-legged frog is incompatible with non-native trout, bullfrog and crayfish (Hayes and Jennings 1986, Bradford 1989, Bradford *et al.* 1994, Knapp and Matthews 2000, Knapp *et al.* 2003, Backlin *et al.* 2004, Vredenburg 2004).

Studies of the distributions of introduced salmonids (rainbow trout and brook trout *Salvelinus fontinalis*) and mountain yellow-legged frogs have shown that introduced trout have had negative impacts on mountain yellow-legged frogs over much of the Sierra Nevada (Bradford 1989, Knapp 1996, Knapp and Matthews 2000). Vredenburg (2002) demonstrated that this is due primarily to predation on tadpoles. Trout are known predators of ranid frogs (Hayes and Jennings 1986, Backlin *et al.* 2004), and there is evidence that introduced trout restrict the distribution and abundance of mountain yellow-legged frogs (Bradford 1989, Bradford *et al.* 1994, Knapp and Matthews 2000, Knapp *et al.* 2003, Backlin *et al.* 2004). Today, non-native trout persist at seven of the eight known locations where the mountain yellow-legged frog occurs in southern California (Backlin *et al.* 2004, Stewart *et al.* 2000). Further, 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 such that recolonization after stochastic (random) local extirpations is essentially impossible. Virtually all streams in the mountains of southern California contain populations of introduced rainbow trout, and, until recently, trout were routinely released in several of the occupied streams. The CDFG, which operates the Mojave and Fillmore fish hatcheries, has stated that no stocked sites and areas accessible to stocked fish overlap with areas where the mountain yellow-legged frog is known to occur (Service in litt. 2005). The CDFG has also been working with the U.S. Forest Service (USFS) to refrain from stocking certain streams and to assess the potential construction of barriers. In their latest report on mountain yellow-legged frog, the USGS (Backlin *et al.* 2004) recommend continuing trout removal efforts in all streams where mountain yellow-legged frog occur in southern California, and expanding these efforts also to the West Fork of City Creek. Conservation of this species may require management of non-native trout populations within proposed critical habitat and continued protection of those lands proposed for critical habitat that do not contain non-native trout.

Two pathogens are of primary concern for the conservation of mountain yellow-legged frogs in southern California. The "red-leg" disease contributed to the loss of a Sierra Nevada population (Bradford 1991). Another pathogen that is of concern to scientists studying amphibian declines is the chytrid fungus (*Batrachochytrium dendrobatidis*). Chytrid fungus may be seriously affecting amphibians around the world, and has recently been discovered on larval and recently metamorphosed mountain yellow-legged frogs in the Sierra Nevada Mountains (Fellers *et al.* 2001). Currently, chytrid fungal disease does not seem to be plaguing the remaining populations (Backlin *et al.* 2004).

In addition to the threats posed by the presence of non-native trout and pathogens, some recreational activities, which involve human activity in or adjacent to streams where the species is still extant, have also been identified as potentially negatively impacting the mountain yellow-legged frogs (Stewart *et al.* 2000). For example, logging activity, recreational mining, or heavy trampling may alter and/or decrease the presence of habitat structure within a stream, alter pool substrate, erode stream banks, or reduce riparian vegetation, negatively affecting various

life history stages and essential behaviors of the mountain yellow-legged frog. Conservation of this species may require special management in areas where heavy recreational use overlaps with occupied habitat.

Chance, catastrophic events which, while normal for the environment in which the frog lives, greatly endanger the remaining, localized populations; *i.e.* fires, droughts, and floods. The area has experienced floods in winter 1968–69, which decimated many of the frog populations formerly abundant in the region (Jennings and Hayes 1994a, b). Drought conditions have prevailed for long periods during the years 1995–2004, with 2002 the height of the drought, and several major fires have occurred (1997, 2003; Backlin *et al.* 2004). However, to alleviate the most immediate threats to the southern California mountain yellow-legged frog, it is possible to reduce or eradicate exotic species, prevent direct human impacts and take precautions to prevent the spread of diseases (Backlin *et al.* 2004). Alleviating the most pressing threats in the occupied areas will allow those populations to expand into currently unoccupied areas which will also be managed and protected allowing even greater population expansion to such an extent that naturally occurring threats will not pose as great a danger.

#### Previous Federal Actions

Please refer to the final listing rule for a summary of previous Federal actions prior to the listing of the southern California of the mountain yellow-legged frog as endangered July 2, 2002 (67 FR 44382). At the time of listing, we concluded that designating critical habitat was prudent; however, we deferred the critical habitat designation to 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 mountain yellow-legged frog without further delay. This action was 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 necessary for the conservation of the species that the listing determination be promptly published (67 FR 44382).

On August 19, 2004, the Center for Biological Diversity filed a lawsuit in the U.S. District Court for the Central District of California challenging the Service's failure to designate critical habitat for the southern California mountain yellow-legged frog (Case No. EDCV 04–01041–VAP). On December

20, 2004, the District Court granted the Center's motion for summary judgment and ordered the Service to publish a proposed critical habitat rule for the mountain yellow-legged frog by September 1, 2005, and a final critical habitat rule by September 1, 2006. This proposed rule complies with the Court's order.

### Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing must first have features that are "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide for the essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features (PCEs) are actually present thereon and may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to protect and manage the habitat in a manner equal to

the protections provided by the designation and consistent with the court's direction in *Gifford Pinchot*. Our interpretation of that requirement pending a new rulemaking is included in the Director's December 9, 2004, memorandum, referenced in the preamble. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. Specific areas outside the geographic area occupied by a species at the time it is listed may only be included in a critical habitat designation if the Secretary determines that such areas are essential for the conservation of the species. In this rule, we have proposed for inclusion in the critical habitat designation some areas not known to be occupied at the time of listing which we have determined are essential for the conservation of the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas to designate as critical habitat, a primary source of information is generally the listing rule for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the

associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Conversely, local conservation actions may occur that provide for special management and protection equal to that of critical habitat, removing the necessity of designation. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery of the mountain yellow-legged frog, or that the critical habitat designation itself is immutable.

Areas that support populations of the mountain yellow-legged frog in southern California, but outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts particularly if new information available to these planning efforts calls for a different outcome.

### Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas of habitat that contain features essential to the conservation of the mountain yellow-legged frog. This includes information from the proposed listing rule (64 FR 71714), final listing rule (67 FR 44382), data from research and survey observations published in peer-reviewed articles, site visits, regional Geographic Information System (GIS) layers, soil, and species coverages, and data compiled in the California Natural Diversity Database (CNDDB).

We have also reviewed available information that pertains to the ecology, natural history, and habitat requirements of this species. This material included information and data in reports submitted during section 7 consultations; research published in peer-reviewed articles and technical reports by the U.S. Geological Survey (USGS) and the USFS; and regional GIS coverages. We are not proposing to designate as critical habitat any areas outside of the geographic area presently occupied by the species in the San Gabriel, San Bernardino and San Jacinto mountains; however, the area proposed for designation includes areas for which we have no data demonstrating current occupancy, but for which we have historic occupancy data.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to identify those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring.

The specific primary constituent elements essential for the conservation of the southern California mountain yellow-legged frog are derived from the abiotic and biotic needs of the species as described below.

#### Space for Individual and Population Growth and for Normal Behavior

The permanent water sources such as streams, rivers, perennial creeks, permanent plunge pools within intermittent creeks, and pools are needed for individual and population growth. These permanent water sources (PCE #1) provide breeding sites and shelter for the mountain yellow-legged frog. Permanent water sources providing for perennial flows are needed for egg-laying and tadpole growth and survival, and must provide adequate water quality for adult and offspring of the mountain yellow-legged frog. Such water sources and their associated riparian and upland habitat also provide habitat for aquatic invertebrates that are

used as a food source by adult mountain yellow-legged frogs, and for the benthic algae and diatoms that are fed upon by larval frogs.

#### Food, Water, Air, Light, or Other Nutritional or Physiological Requirements

A wide variety of invertebrates including beetles (Coleoptera), ants (Formicidae), bees (Apoidea), wasps (Hymenoptera), flies (Diptera), true bugs (Hemiptera), and dragonflies (Odonata) have been found in the stomachs of adult mountain yellow-legged frogs (Long 1970). Terrestrial insects and adult stages of aquatic insects may be the preferred food for adult mountain yellow-legged frog (Bradford 1983); larger frogs consume more aquatic true bugs probably because of their more aquatic behavior (Jennings and Hays 1994).

The riparian zone, with the associated vegetation canopy (PCE #2), is necessary to maintain the prey base needed for the nutritional requirements of the mountain yellow-legged frog. Larvae graze on algae and diatoms in the silt along rocky bottoms in streams and ponds (Zeiner *et al.* 1988). An open or semi-open canopy of riparian vegetation (canopy overstory not exceeding 85 percent) is needed to ensure that adequate sunlight reaches the stream to allow for basking behavior and for photosynthesis by benthic algae and diatoms that are food resources for larval mountain yellow-legged frog.

#### Cover or Shelter

Mountain yellow-legged frogs are preyed upon by the western terrestrial garter snake (*Thamnophis elegans*), Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcrackers (*Nucifraga columbiana*), and coyotes (*Canis latrans*) (USFS 2002). Pools with bank overhangs, downfall logs or branches, and/or rocks (PCEs #1 and #2) provide cover from predators for mountain yellow-legged frogs.

#### Sites for Breeding, Reproduction, and Rearing of Offspring

In southern California, the mountain yellow-legged frog occupies streams in the chaparral belt (Zweifel 1955), and cool and cold, rocky, mountain watercourses shaded by trees, rocks, and other shelter, where the flow comes from springs and snowmelt (Jennings and Hayes 1994b) (PCEs #1 and #2). California fan palms (*Washingtonia filifera*), and mesquite (*Prosopis* spp.) dominate the mountain yellow-legged frog's habitat at lower elevations, and, in other areas, habitat is dominated by white alders (*Alnus rhombifolia*),

willows, sycamore, conifers and maples (Jennings and Hayes 1994b, Backlin *et al.* 2004). Open gravel banks and rocks projecting above the water may provide sunning posts (Zweifel 1955). Many of the streams in which they occurred historically and currently occupy have a relatively steep gradient and large boulders in the stream beds (Stebbins 1951). Although knowledge pertaining to the specific habitat requirements of mountain yellow-legged frogs in southern California is limited, the presence of water year-round is known to be necessary for both reproduction and for hydration of juveniles and adults. In southern California, mountain yellow-legged frogs historically ranged from 1,214 ft to 7546 ft (370 m to 2,300 m) in elevation (Jennings and Hayes 1994a, 1994b).

#### Historic and Geographic Distribution of the Species

The occupied streams that are proposed for designation contain physical and biological features that are representative of the historic and geographical distribution of the species. The unoccupied streams that are proposed for designation were all historically occupied and will decrease the degree of fragmentation within the current geographic distribution of the DPS.

#### Primary Constituent Elements

Pursuant to our regulations, we are required to identify primary constituent elements essential to the conservation of the mountain yellow-legged frog, together with the proposed designation of critical habitat that contains features essential to the conservation of the species. In identifying primary constituent elements, we used the best available scientific and commercial data and information. Although the physical ranges described below may not capture all of the variability that is inherent in natural systems, these ranges best represent the physical and biological features essential to the conservation of the southern California DPS of the mountain yellow-legged frog in the occupied areas proposed for designation. In order to conserve this species, we believe that it will be necessary to designate critical habitat in areas currently unoccupied by the species, please see our discussion of Criteria Used to Identify Critical Habitat and Unit Descriptions sections below for further discussion of unoccupied habitat.

The primary constituent elements determined to be essential to the conservation of the southern California

mountain yellow-legged frog are the following:

1. Water source(s) found between 1,214 ft (370 m) to 7,546 ft (2,300 m) in elevation that are permanent, to ensure that aquatic habitat for the species is available year-round. Water sources include, but are not limited to streams, rivers, perennial creeks (or permanent plunge pools within intermittent creeks), pools (*i.e.*, a body of impounded water that is contained above a natural dam) and other forms of aquatic habitat. The water source should maintain a natural flow pattern including periodic natural flooding. Aquatic habitats that are used by mountain yellow-legged frog for breeding purposes must maintain water during the entire tadpole growth phase (which can be from 1–4 years duration). During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in wetter years. Further, the aquatic habitat should include:

a. Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel cobble, rock, and boulders;

b. Water chemistry with a pH generally 6.6 to 9, dissolved oxygen varying from 23 to 28 percent and water temperatures during summer (June through August) ranging between 4.0 and 30.3 degrees Celsius;

c. Streams or stream reaches between known occupied sites that can function as corridors for adults and frogs for movement between aquatic habitats used as breeding and/or foraging sites.

2. Riparian habitat and upland vegetation (*e.g.* ponderosa pine, montane hardwood-conifer, montane riparian woodlands, and chaparral) extending 262 feet (80 m) from each side of the centerline of each identified stream and its tributaries, that provides areas for feeding and movement of mountain yellow-legged frog, with a canopy overstory not exceeding 85 percent that allows sunlight to reach the stream and thereby providing basking areas for the species.

#### Criteria Used To Identify Critical Habitat

We are proposing to designate critical habitat on lands that we have determined to contain habitat with features essential to the conservation of the mountain yellow-legged frog. These areas have sufficient primary constituent elements described above to enable the mountain yellow-legged frog to carry out its essential life processes.

The currently occupied habitat for the mountain yellow-legged frog is highly

limited and isolated. The population estimates are all extremely small, with no stream having an estimated population size exceeding 100 breeding adults, and an overall total estimate of approximately 183 adults surviving in 2003 (including City Creek, East Fork; Backlin *et al.* 2004). This DPS is at a high risk of extinction and is highly susceptible to stochastic events (Backlin *et al.* 2004). As such, all occupied areas are proposed as critical habitat.

We have defined occupied proposed critical habitat as: (a) Those streams known to be occupied by the mountain yellow-legged frog at the time of listing (1987–2002); (b) the riparian, upland and aquatic habitats 262 ft (80 m) from the centerline of the stream including tributaries; and (c) aquatic habitats within 4,905 ft (1,495 m) upstream from the upstream-most occurrence and 4,905 ft (1,495 m) downstream from the downstream-most occurrence on the main stem of the river or creek known to be occupied, including any tributary that flows into it (see the following sections for explanation of the scientific basis for the chosen values). To delineate the proposed units of occupied critical habitat, we plotted on maps all occurrences records of mountain yellow-legged frog as points and polygons along streams that were occupied at the time of listing. We then delineated the riparian and upland areas that mountain yellow-legged frogs use bordering the stream, as well as the upstream and downstream range of movement, as defined under (c) above.

#### Occupied by the Mountain Yellow-Legged Frog at the Time of Listing

We used the proposed and final listing rules; reports prepared by the USGS, the USFS; the California Department of Fish and Game (CDFG), the CNDDDB, researchers, and consultants; and available information to determine the location of specific areas within the geographical area occupied by the southern California mountain yellow-legged frog at the time of listing (“occupied at the time of listing” is defined as the time period 1987–2002).

#### Width of Riparian and Upland Habitats Along Streams Occupied by Mountain Yellow-Legged Frog

We estimated the width of riparian and upland habitats occupied by adults based on a study of movement ecology of mountain yellow-legged frogs in the Sierra Nevada Mountains (Pope and Matthews 2001). The study, in which a total of 581 adult frogs were marked, included 5 stream segments and 11 lakes and ponds. The movement of

mountain yellow-legged frogs throughout the entire annual period of activity (mid-late July to mid-late October) was recorded over two successive seasons (1997 and 1998). Of these marked frogs, 82 frogs made overland movements between water bodies that were not connected by aquatic pathways (straight line distance between lake 4 and lake 6 was 216 ft (66 m), straight line distance between lake 5 and stream 41 was 466 ft (142 m), and overland distance between lake 5 and unnamed lake was 1,378 ft (420 m). Based on these results, 72 frogs traveled a minimum distance of 216 ft (66 m), 9 frogs traveled a minimum distance of 466 ft (142 m), and 1 frog traveled 1,378 ft (420 m). The weighted mean overland distance traveled by mountain yellow-legged frogs was approximately 259 ft (79 m).

We applied this weighted mean overland distance (rounded up to 262 ft (80 m)) to determine the width of the riparian and upland habitats along streams occupied by the mountain yellow-legged frog in southern California. We also reviewed the preliminary results of an unpublished study that examined mountain yellow-legged frog movements in the Sierra Nevada Mountains (Knapp in litt. 2005). This study included observations of movement between Marmot Lake and Frog Lake (not connected by a stream) of at least 8,858 ft (2,700 m) by 3 frogs in 2003 and 6 frogs in 2004. In comparison to Knapp’s study, our 262 ft (80 m) width is a conservative estimate of the riparian and upland habitats occupied by the mountain yellow-legged frog.

#### Length of Streams Occupied by the Mountain Yellow-Legged Frog

We estimated the length of stream occupied by mountain yellow-legged frog adults (upstream and downstream distances from occurrences) based on review of several studies that give data on mountain yellow-legged frog movements (Pope and Matthews 2001, Knapp in litt. 2005, Backlin *et al.* 2004, Vredenburg 2005). However, there are no definitive published studies on the upstream and downstream movements of mountain yellow-legged frog and we extracted portions of these studies that specifically identified stream movement. In their study of movement ecology of mountain yellow-legged frog, Pope and Matthews (2001) reported a tagged female that was recaptured in a lake 3,281 ft (1,000 m) southeast of the study area, where a one-way trip requires a minimum of 1,968 ft (600 m) of travel in a fast-flowing stream. For streams in southern California, Backlin

*et al.* (2004) reported a range of distances between approximately 131 ft (40 m) to 4,902 ft (1,494 m). In the Sierra Nevada Mountains, Knapp (in litt. 2005) reported dispersal along a stream that connects Marmot Lake and Cony Lake (a distance of approximately 2,953 ft (900 m)) by 12 frogs in 2003 and 46 frogs in 2004. Knapp (in litt. 2005) also reported movement of 3 frogs in 2003 and 1 frog in 2004 of approximately 11,811 ft (3,580 m) between Marmot Lake and No Good Lake that included both dispersal along a stream and overland movement. Finally, we received verbal information (Dr. V. Vredenburg, University of California-Berkeley, pers. comm. 2005) that mountain yellow-legged frog tadpoles have been recovered approximately 5,905 ft (1,800 m) downstream from where they were tagged in the Sierra Nevada Mountains.

Given the variability and sources of the available information on stream dispersal distances for mountain yellow-legged frogs, we are unable to calculate or estimate an average stream dispersal distance. Instead, we have defaulted to use the observed distance of 4,905 ft (1,495 m) that an adult mountain yellow-legged frog moved along City Creek, East Fork in the San Bernardino Mountains. While this observation represents the longest dispersal distance reported by Backlin *et al.* (2004) for the southern California, it is less than half the longest dispersal distance observed thus far in the Sierra Nevada Mountains (3,580 m; Knapp *in litt.* 2005). We believe the observation from City Creek represents the best available information to define occupied upstream and downstream reaches for the following reasons: (1) This dispersal distance connects known occurrences that occur along a stream or in populations that occur in tributaries; (2) this dispersal distance is specific to and representative of the southern California populations of the mountain yellow-legged frog; (3) movement distances between 131 ft (40 m) to 4,902 ft (1,494 m) that were identified by Backlin *et al.* (2004) represent home range movements and reflect the high site fidelity displayed by mountain yellow-legged frog and are therefore not representative of dispersal patterns (Backlin *et al.* 2004); and (4) this distance is less than the maximum dispersal distances for stream and overland movements identified by Knapp (*in litt.* 2005; maximum distance was 3,580 m) for adults and by Vredenburg (pers. comm. 2005; maximum distance was 1,800 m) for tadpoles, and likely represents a conservative estimate of the upstream and downstream habitat occupied by

the mountain yellow-legged frog in southern California.

We are also proposing to designate critical habitat on lands that were historically occupied by the mountain yellow-legged frog, but are not known to be currently occupied. These subunits were all occupied within the past 45 years, contain features essential to the conservation of the species, and are considered essential for the conservation of the southern California DPS of the mountain yellow-legged frog. These additional sites were selected based in part on comments and information given by herpetologists and experts on the southern California DPS of the mountain yellow-legged frog and by biologists from various management agencies (USGS, CDFG, USFS), who provided their knowledge of the area in terms of anthropogenic activity level, current habitat suitability for the species (survey data), and management potential. At this time, based on the best available information, we have determined that without these unoccupied areas managed and protected for the mountain yellow-legged frog, conservation of the species will not be possible in the foreseeable future.

The criteria used for selecting the additional sites were the following:

(1) Streams where the habitat contains the necessary PCEs (*e.g.*, characteristics such as perennial water flow, pools, riffles, runs, riparian and upland habitat, banks with rocks or substrate);

(2) Streams where the habitat has been characterized as "suitable" for mountain yellow-legged frog by USGS, CDFG and USFS in their survey reports (*i.e.*, contains habitat which meets additional, more specific characteristics that allow for a range of the species' biological needs, such as containing sites for breeding, feeding, sheltering, and other essential mountain yellow-legged frog behavioral patterns);

(3) Streams that were known to be occupied by the species within the past 50 years, and where the habitat has not changed appreciably during that time (thus allowing for the assumption that previous occupancy still provides good indication of the known suitability of the site for the species' biological needs);

(4) Streams that have potential for current occupancy by mountain yellow-legged frog (*i.e.*, no conclusive evidence is available that the species is currently completely absent from the site due to few, incomplete, or no surveys having been conducted there recently, and the habitat has not changed appreciably);

(5) Streams that are in remote locations (*i.e.*, geographically distant

from areas with heavy anthropogenic activities, such as vehicular traffic, human recreation, dredging, trout stocking, water regulation, pollution);

(6) Streams that are not currently stocked with non-native aquatic species;

(7) Streams where threats to the species either no longer exist, or are few and could be easily alleviated (*e.g.*, by shifting current human recreational use patterns, and/or by trout removal) through voluntary cooperative conservation measures;

(8) Streams where there is significant potential for re-occupation by the species, either by natural means through dispersal from currently occupied sites (*i.e.*, located within 5 km of a currently occupied site), or by future re-introduction efforts.

### Special Management Considerations or Protections

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection. Threats to those features that define important habitat (primary constituent elements) for the mountain yellow-legged frog include the direct and indirect impacts of some human recreation activities, and watershed management practices, water diversions from streams, fire management practices, and hazardous materials spills along roadways adjacent to streams.

Recreational activities (*e.g.* camping, hiking, fishing, and recreational mining) are cited as factors that may have contributed to the decline of mountain yellow-legged frog in the San Gabriel, San Bernardino, and San Jacinto mountains (USFS 2002). In areas occupied by frogs, human use in and along streams can disrupt the lives of eggs, larvae, and adult frogs (Jennings 1995), and change the character of the stream (*e.g.*, sediment and water quality), its bank and associated vegetation in ways that make sections of the stream less suitable as habitat for frogs. For example, logging activity, recreational mining, or heavy trampling may alter and/or decrease the presence of habitat structure within a stream such as bank overhangs, downed logs or branches, and rocks or may alter pool substrate, thereby reducing or eliminating available foraging, resting, breeding or egg-laying sites, and increasing suspended sediments and turbidity (PCE #1). Human activities

associated with heavy recreational use could also erode or denude stream banks or shores, reduce the extent of riparian vegetation, potentially reduce the available prey base for frogs, alter the amount of stream shade, and increase sedimentation within stream channels due to exposed soils, and impact water quality (e.g. temperature, pH) (PCEs #1 and 2). Changes due to human recreation could contribute to adverse changes to the habitat that result in local extinctions where these activities occur in close proximity to mountain yellow-legged frog populations (Jennings 1995, Backlin *et al.* 2001). Heavy recreational use is specifically cited as a potential threat in the area of Bear Gulch and Vincent Gulch, the San Gabriel River—East Fork, Little Rock Creek, Fuller Mill Creek, and Dark Canyon and recreational mining is cited as a potential threat in the East Fork San Gabriel (Jennings 1994, 1995, 1998, 1999, USFS 2002). However, due to the proximity of the San Bernardino, San Gabriel and San Jacinto mountains to large urban centers and resulting high recreational use of these areas, there is potential for recreational impacts to all of the areas being proposed as critical habitat.

Watershed management activities such as forest thinning or clearing for public safety or fire prevention (e.g., fuel load management) may also impact the physical and biological features determined to be essential for conservation of the species. Depending on the extent of alteration and the proximity to streams, forest thinning or clearing may alter streambed and riparian characteristics in ways that make sections of the stream less suitable as habitat for frogs. For example, thinning or clearing adjacent to streams could increase flooding and sedimentation within stream channels (Jennings 1998) due to exposed soils, impacting water quality (e.g. turbidity and pH) (PCEs #1). Alterations to riparian vegetation could reduce the prey-base available for mountain yellow-legged frogs (PCE #2). At the same time, the presence of unnaturally high canopy cover or dense riparian vegetation could decrease the amount of basking areas available (PCE #2) and render the habitat unsuitable for mountain yellow-legged frog. Water diversion, such as water removal from the drainage system occupied by the species could reduce water levels and decrease the quality and extent of suitable breeding, wintering and foraging sites, and reduce the prey-base availability. The use of herbicides or other fire retardant chemicals to reduce

fuel loads may impact water quality if used upslope or above a stream (PCE #1). Hazardous material spills along roads that cross streams are also a potential threat impacting water quality (PCE #1). Little Rock Creek, East Fork City Creek, Dark Canyon, Fuller Mill and Hall Canyon are cited as having potentially high canopy cover and/or dense riparian vegetation within the watershed and having potential for a hazardous material spills due to an adjacent roadway (USFS 2002).

The USFS prepared the Mountain Yellow-Legged Frog Conservation Assessment and Strategy: Angeles and San Bernardino National Forests (Strategy) (USFS 2002). This Strategy provides a framework for conservation actions to assist in the recover and conservation of the mountain yellow-legged frog and identifies the following management actions necessary to reduce impacts to mountain yellow-legged frog habitat from (1) recreation: Closing, rerouting or reconstructing unauthorized trails; closing parking areas used for unauthorized trail access; removing campsites and picnic tables adjacent to occupied creeks; installing signing at trailheads and along access points to promote understanding of the species' biology and habitat requirements; (2) high fuel loads: Developing plans for fuels reductions in the watershed which will examine potential riparian treatment of high canopy or dense vegetation; and (3) hazardous materials spills: developing an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries.

Some of the conservation actions outlined in the Strategy have been implemented. For example, the USFS closed camp sites adjacent to Dark Canyon/North Fork San Jacinto River in May 2001 and acquired approximately 60 ac (24 ha) of mountain yellow-legged frog habitat on in the headwaters of Fuller Mill Creek (USFS 2002) to protect a discontinuous stretch of habitat previously under private ownership. However, recreational activities that may impact habitat for the mountain yellow-legged frog continue to occur in or adjacent to other occupied sites. Also, we are not currently aware of the development of management plans to protect specific streams from potential impacts related to fuels reduction or hazardous spills. However, these issues may be addressed in the USFS's updated Forest Plan covering the Angeles and San Bernardino National Forests. The USFS is currently consulting with the Service under section 7 of the Act on this updated

plan. One of the goals of the 2004 draft Forest Plan is to establish critical biological zones that include the most important areas on the Angeles and San Bernardino National Forests to manage for the protection of imperiled species, including the mountain yellow-legged frog (USFS 2004). The revised draft Forest Plan is currently undergoing policy and agency review. Thus, the stream segments that are being proposed as critical habitat may or may not require special management considerations or protection as discussed above, depending on the provisions of the final management plans. Because we do not know the final disposition of these plans, we cannot make a determination as to whether they provide similar protections as a critical habitat determination would provide under the standards of *Gifford Pinchot*. Thus we are proposing designation of these streams.

#### Proposed Critical Habitat Designation

We have determined that approximately 8,770 ac (3,549 ha) of land containing features essential to the conservation of the mountain yellow-legged frog exists in Los Angeles, San Bernardino, and Riverside counties. Of this total, we are proposing to designate 8,283 ac (3,352 ha) of land as critical habitat within three critical habitat units (further divided into subunits): Unit 1 (with 7 subunits) in the San Gabriel Mountains (Los Angeles and San Bernardino counties), Unit 2 (with 3 subunits) in San Bernardino Mountains (San Bernardino County), and Unit 3 (with 4 subunits) in the San Jacinto Mountains (Riverside County). The remaining 487 ac (197 ha) are managed and protected under the completed Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and to the extent that these areas meet the definition of critical habitat pursuant to section 3(5)(A)(i)(II), it is our intention to exclude these areas from critical habitat designation pursuant to section 4(b)(2) of the Act (see *Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act* section for a detailed discussion).

The proposed critical habitat units and subunits for the mountain yellow-legged frog in southern California, and their approximate sizes, are shown in Table 1. The unit and subunit names reflect the locations of the streams which constitute each unit. Table 2 provides information about landownership within each subunit being proposed.

The critical habitat units and their subunits described below are our best assessment, at this time, of the areas of

habitat with features essential for the conservation of the mountain yellow-legged frog. Each of these proposed critical habitat areas provides sufficient primary constituent elements to support essential mountain yellow-legged frog behaviors and life history requirements

and one or more of them may require special management considerations or protection.

TABLE 1. Areas of habitat determined to contain features essential for the conservation of the mountain yellow-legged frog and the approximate area

encompassed by each proposed critical habitat unit. All units were historically occupied, see footnotes for current occupancy data and if the unit was occupied at the time of listing. [Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit number/subunit letter	Critical habitat unit/subunit	Acres	Hectares	Occupancy *
1	SAN GABRIEL MOUNTAINS UNIT (Angeles and San Bernardino National Forests, Los Angeles and San Bernardino Counties).			
A	San Gabriel River, East Fork (main stem, including Bear Gulch, Vincent Gulch, Alder Gulch, and other tributaries).	2,474	1,001	OTL, CO
B	Big Rock Creek, South Fork	625	253	OTL, CO
C	Little Rock Creek	615	249	OTL, CO
D	Devil's Canyon	279	113	OTL, CO
E	Day Canyon Creek	635	257	CO
F	San Gabriel River, East Fork, Iron Fork	373	151	
G	Bear Creek (off San Gabriel River, West Fork)	116	47	
2	SAN BERNARDINO MOUNTAINS UNIT (San Bernardino National Forest, San Bernardino County)			
A	City Creek; (the tributaries East Fork and West Fork)	1,386	561	OTL
B	Barton Creek, East Fork	193	78	CO
C	Whitewater River, North Fork (upper reaches)	74	30	
3	SAN JACINTO MOUNTAINS UNIT (San Bernardino National Forest, Riverside County).			
A	San Jacinto River, North Fork (the tributaries Black Mountain Creek, Fuller Mill Creek, Dark Canyon).	919	372	OTL, CO
B	Indian Creek (at Hall Canyon)	126	51	OTL, CO
C	Tahquitz Creek (upper reaches, including Willow Creek tributary)	358	145	
D	Andreas Creek (upper reaches)	109	44	
	Total	8,283	3,352	

\* OTL = Occupied at the Time of Listing; CO = Currently Occupied.

TABLE 2. Approximate proposed critical habitat area (ac (ha)) by County and land ownership. Estimates reflect

the total area within critical habitat unit boundaries.

County	Federal *	Local/state	Private	Total
Angeles	4,483 ac (1,814 ha)	0 ac (0 ha)	0 ac (0 ha)	4,483 ac. (1,814 ha).
San Bernardino	2,169 ac (878 ha)	0 ac (0 ha)	119 ac (48 ha)	2,288 ac. (926 ha).
Riverside	1,301 ac (526 ha)	211 ac (86 ha)	0 ac (0 ha)	1,404 ac. (568 ha).
Total	7,953 ac (3,218 ha)	211 ac (86 ha)	119 ac (48 ha)	8,283 ac. (3,353 ha).

\* Federal lands include U.S. Forest Service and other Federal land.

We present below a general description of the overall range followed by a description of the units within each of the three mountain ranges the species occupies, and describe reasons why each area within those units contains habitat with features that are essential for the conservation of the mountain yellow-legged frog.

**Unit Descriptions**

As discussed in the *Critical Habitat* section above, we believe that all lands proposed as critical habitat are important for the persistence of the

mountain yellow-legged frog for the following reasons:

(1) The range of the mountain yellow-legged frog in southern California has been reduced to less than 1 percent of its original area (*i.e.*, extirpated from 99 percent of its former range as estimated by a review of historical records Jennings and Hayes (1994)), with the remaining occupied habitat limited and fragmented;

(2) The population estimates for each stream are extremely small, with no estimate exceeding 100 breeding adults, and a approximate total of only 183

surviving adults for the entire southern California range (this sum includes the City Creek, East Fork population, which has not recently been observed; Backlin *et al.* 2004);

(3) Existing small populations are at a high risk of extinction due to stochastic events (Backlin *et al.* 2004) or deterministic events (Skelly *et al.* 1999);

(4) Existing small populations are susceptible to other threats, including presence of non-native trout, and human recreation;

Of the 14 subunits being proposed as critical habitat, 5 were historically

occupied but are not known to be occupied at the time of listing (subunits 1F, 1G, 2C, 3C, 3D). These subunits were occupied recently (within the past 45 years) and the stream and riparian habitat within each has not changed appreciably (Jennings 1993, 1994, 1995, 1998, 1999; Jennings and Hayes 1994a, b; Backlin *et al.* 2001, 2002, 2003, 2004). Each of these subunits thus contains habitat with features important for the conservation of the species. Because of the necessity of population increase or augmentation for the continued survival of this species, these areas may serve as important re-introduction sites, particularly in the San Bernardino and San Jacinto Mountains, where the number of known occurrences has decreased to one and two limited areas, respectively. Even then, one of the two known populations in the San Bernardino Mountains (City Creek) have experienced a recent fire (2003) and subsequent flooding and were not observed in 2004 (Backlin *et al.* 2004).

We are proposing additional areas historically occupied, but not identified in the listing rule, nor known to be currently occupied, for the following reasons:

(1) The current, overall population size of the mountain yellow-legged frog is at such a low level, it must increase in order to insure long-term survival of this DPS (cf. Backlin *et al.* 2004). While the occupied units provide habitat for current populations, additional units will provide habitat for population augmentation either through natural means, or by re-introduction, thus reducing threats due to naturally occurring events;

(2) Population augmentation either through natural means, or by re-introduction into the additional subunits may serve to decrease the risk of extinction of the species through stochastic events, such as fires or disease as the current, isolated populations are each at high risk of extirpation from such stochastic events (Backlin *et al.* 2004), particularly because of their small sizes and restricted ranges;

(3) Population augmentation either through natural means, or by re-introduction into the additional subunits may increase the viability of the occupied subunits as well as of the existence of the mountain yellow-legged frog in southern California as a whole (increase the persistence likelihood at the local population level and of this DPS range wide);

(4) Additional subunits will serve to decrease the degree of fragmentation of the current geographic distribution of the mountain yellow-legged frog within

each of the three mountain ranges, or *i.e.*, increase the connectivity between streams that are known to be currently occupied;

(5) Additional subunits are proposed in areas occupied in the near past and located within the historical range of the species such that they will serve as corridors between currently occupied sites. Most proposed unoccupied subunits lie within 1.5–5 km of an occupied site, the only exception is subunit 2C (in historically occupied Whitewater River). Although subunit 2C is unlikely to serve as a corridor between currently occupied areas, this subunit is the only representative area of southeastern desert slope and of the San Gorgonio Mountains, and ensures representation of the full geographical distribution of the mountain yellow-legged frog not otherwise represented by the currently occupied sites;

(6) There is potential for these areas to be currently occupied, as survey efforts in these areas have been limited. No conclusive evidence is available for current complete absence of mountain yellow-legged frogs at any of these sites due to few, incomplete, or no surveys having been conducted there recently. Although the species is described as highly aquatic but not as solitary (Vredenburg 2005), the species detectability is generally low (cf. Backlin *et al.* 2004), particularly if the population occurs in low numbers. Possible surveys may have missed sightings, as shown by repeated surveys in Dark Canyon and other areas where there are also confirmed historical sightings, followed by repeated annual reports of no occurrences for up to three years, with subsequent population “re-discovery” (cf. USGS, CDFG, USFS, survey reports 1990–2005);

(7) The additional subunits may offer habitat that is superior to that in the occupied subunits (*i.e.*, the potential viability of frogs in unoccupied subunits may be higher) due to the fact that the selected additional subunits contain fewer more easily treatable threats in general, than the occupied units.

The Service is currently working on a recovery plan to implement the reintroduction of frogs into these “not known to be occupied subunits” with all stakeholders.

All of the streams segments being proposed as critical habitat contain sufficient primary constituent elements essential to the mountain yellow-legged frog. We based this determination on site specific information contained in recent survey and technical reports and other available literature. We also based this determination on the fact that lands being proposed as critical habitat are

owned and managed by the U.S. Forest Service and have not been subject to urban development or extensive recreational development that might have resulted in large-scale habitat destruction or alteration. The Angeles and San Bernardino National Forests focus on recreational and commercial land use and therefore, allow, at most, small-scale grazing or timber operations at this time (USFS 2004).

### Critical Habitat Unit 1: San Gabriel Mountains Unit

This unit is comprised solely of USFS lands and lies entirely within the San Gabriel Mountains of the Angeles and San Bernardino National Forests in Los Angeles and San Bernardino counties. This unit is composed of stream segments within 7 subunits (1A–1G) of which 4 subunits (1A–1D) were known to be occupied at the time of listing; 1 subunit (1E) was found to be occupied subsequent to the listing rule, and 2 subunits (1F, 1G) are assumed to be unoccupied but were historically occupied.

The populations in Unit 1 represent the northern and western-most known distribution of the southern California mountain yellow-legged frog. Both Subunit 1 (Bear Gulch on the East Fork of the San Gabriel River) and Subunit 2 (South Fork of Big Rock Creek) represent areas with the two largest known remaining breeding populations throughout the entire range of the species (Backlin *et al.* 2004a), and these areas encompass habitat with features that are essential for the conservation of the mountain yellow-legged frog.

Other subunits in Unit 1, such as Vincent Gulch, Little Rock Creek, and Devil’s Canyon also contain features essential for the conservation of the southern California mountain yellow-legged frog. Further, these three populations maintain the continuity of distribution throughout the San Gabriel Mountains and thereby reduce the risk of losing any isolated population from a stochastic, catastrophic event. Although these areas apparently support smaller adult populations than Bear Gulch and Big Rock Creek, mountain yellow-legged frogs have occurred in these areas since the early 1900’s. They may contain important summer or winter habitat for frogs from nearby areas, and may also be a source of breeding animals to the larger population, and are therefore likely to contain resources important for the continued survival of the remaining populations of mountain yellow-legged frog.

The following habitat description for this region is given by Jennings (1993). The San Gabriel Mountains are, in

general, largely composed of metamorphic rock that has been uplifted and recently eroded, thus resulting on steep slopes with thin soil layers. The vegetation that covers much of the area is California chaparral, although Jeffrey pine (*Pinus jeffreyi*) is found at the elevations over 6,900 ft (2,104 m). The larger watercourses contain riparian woodlands consisting mainly of white alder (*Alnus rhombifolia*), canyon live oaks (*Quercus chrysolepis*), California sycamores (*Platanus racemosa*) and willows (*Salix spp.*), while on the surrounding hillsides there is big cone spruce (*Pseudotsuga macrocarpa*) and some incense cedar (*Calocedrus decurrens*) on surrounding hillsides.

Prior to 1970, the mountain yellow-legged frog was the most abundant and widely distributed frog in the Angeles National Forest (Zweifel 1955, Schoenherr 1976, Jennings 1993). However, recent surveys (Backlin *et al.* 2004) have only been able to locate this species in four areas within the Angeles National Forest; these areas are disjunct and widely separated both geographically, but also by paved roads. The reason(s) for the drastic decline in the abundance of mountain yellow-legged frogs on the Forest area remain unclear (Jennings 1993). The areas historically occupied by all three ranid species (foothill yellow-legged frog, California red-legged frog, mountain yellow-legged frog) in the southern portion of the San Gabriel Mountains are now heavily impacted by water regulation or diversion, off-road vehicle use, recreation (swimming, fishing, day use, camping), and in some areas, recreational placer gold mining (dredging; Jennings 1993). In addition, rainbow trout and bullfrogs (*Rana catesbeiana*) have been introduced into their habitat (Jennings 1999); both these non-native species act as predators or resource competitors for numerous Ranid species (Hayes and Jennings 1986, Backlin *et al.* 2004).

#### **Subunit 1A: San Gabriel River East Fork, (Angeles National Forest)**

The East Fork of the San Gabriel River flows north to south, through remote, mountainous terrain that lies north of the West Fork of the San Gabriel River in the Angeles National Forest, Los Angeles County. It lies within the 44,000 ac (17,807 ha) Sheep Mountain Wilderness Area. This subunit includes the following stream reaches in the upper section of the East Fork of the San Gabriel River: Bear Gulch, Vincent Gulch, Fish Fork, Iron Fork, and Alder Gulch.

In the main stem of the East Fork of the San Gabriel River, mountain yellow-

legged frogs have been observed as early as 1933, from as far south as Heaton Flats and as far north as the headwaters at Prairie Fork, Vincent Gulch, and Bear Gulch, where there are extant populations. The largest of these occurs in Bear Gulch, with an estimated 54 adults for 2001–2003 (95% confidence interval 33–93). In 2003, 61 adults, 76 tadpoles, and just one egg mass were found in Bear Gulch. In neighboring Vincent Gulch, mountain yellow-legged frogs have been observed as early as 1933 (California Academy of Sciences), but in 2003 contained only about 2 adults and 11 first-year larvae (Backlin *et al.* 2004). Jennings (1993) stated that the trail and/or campgrounds that occur at the mouth of Vincent Gulch should be re-routed. In adjacent Prairie Fork, mountain yellow-legged frogs have been observed since 1982, but were not located during surveys in 1998 and 2000; there is a campground located here and trout occur (Jennings, Backlin *et al.* 2004). The populations in the area of this unit has experienced a number of major climatic events, such as devastating flooding that occurred throughout Southern California in the years 1968–69, when mountain yellow-legged frog populations seemed to be greatly reduced (Jennings and Hayes 1994b) while the area of the headwaters of the San Gabriel River, East Fork were severely burned in 1997 (Jennings 1999).

Threats to the species and its habitat in this subunit include the presence of non-native trout, potential water diversion, and human recreation, including recreational mining (USFS 2002). There have been proposals for water removal from the upper part of the drainage area above Vincent and Bear Gulch for the winter recreation on Blue Ridge, and increased siltation load from fire burns (in 1999) and from people recreating in the streams (Jennings 1999). South of these headwater streams, most areas of the East Fork of the San Gabriel River contain non-native trout (Backlin *et al.* 2004). The main stem of this river, where mountain yellow-legged frog was observed as early as 1933, has been stocked with trout near its base (near Heaton Flats) 52 times between 1947 and 1998 (Backlin *et al.* 2004). The Alder Gulch tributary to the East Fork of the San Gabriel River has not been surveyed extensively, but it contains habitat suitable to the mountain yellow-legged frog, which was known to occur here at least from 1994 to 1998. Rainbow trout were stocked in this stream twice between 1940 and 1969, and the trout persist today (Backlin *et*

*al.* 2004). Stream segments in this subunit may require special management consideration or protection such as relocation of hiking trails or picnic areas or other access limitations in or near sensitive areas, additional monitoring of authorized mining activities, and removal of non-native trout species.

#### **Subunit 1B: Big Rock Creek, South Fork (Angeles National Forest)**

In the South Fork of Big Rock Creek, the mountain yellow-legged frog occurs at the uppermost reaches of the tributaries, below which rainbow trout occur. The number of frogs here is almost 10 times greater than in Little Rock Creek (Backlin *et al.* 2004). The breeding adult population of mountain yellow-legged frog in the South Fork of Big Rock Creek between 2000 and 2003 was estimated at 27–74 (Backlin *et al.* 2004). Big Rock Creek, along with Bear Gulch (subunit 1A), represents the largest adult breeding populations throughout the range of the species.

Threats to the species and its habitat in this subunit include the presence of non-native trout (USFS 2002; Backlin *et al.* 2004) and human recreation. In 2002, recent severe drought conditions caused nearly the entire creek to dry such that only a few shallow pools remained below the area where the frogs occur; these contained an estimated number of trout between 20 and 100 fish in each (Backlin *et al.* 2004). By 2003, the drought conditions had greatly reduced the trout in the reaches below the frogs, providing opportunity for successful trout removal, and trout barrier implementation (Backlin *et al.* 2004). By late 2003, approximately 3 individuals were found to occur about 1 km downstream from where the bulk of the population occurs, where only one was found in previous years; it is hypothesized that these individuals could establish and persist given little to no trout (Backlin *et al.* 2004). There is currently no fish barrier to prevent trout from re-colonizing the upper reaches in years with heavier water flow, such as 2005. The main stem of Big Rock Creek has been stocked with trout 51 times between 1947–1998, and the South Fork of Big Rock Creek stocked 4 times from 1948–1953 (Backlin *et al.* 2004). Little documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit exists, but the subunit borders near a campground, hiking trails and there are several roads close by (*e.g.*, Angeles Crest Highway). Further, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that

recreation occurs to some extent within this subunit. As a result of these threats, the stream segments in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and removal of non-native trout.

#### **Subunit 1C: Little Rock Creek (Angeles National Forest)**

Little Rock Creek is a long, desert-flowing drainage that contains substantial arroyo toad (*Bufo californicus*) population in the lower reaches, where camping and OHV use are popular activities (Stephenson and Calcarone 1999). Here, the mountain yellow-legged frog once ranged from its headwaters, and throughout the entire length of this stream to where it empties northwest into the Mojave. This stream, where mountain yellow-legged frog were observed as early as 1911, has a reservoir at its base where non-native trout have been stocked 51 times between 1947 and 1998 (Backlin *et al.* 2004). Today, the current population is estimated at approximately 9 individuals, and believed to exist only at its headwaters at the highest elevations of the stream (Backlin *et al.* 2004), although the side tributaries have been little studied.

Threats to the species and its habitat in Little Rock Creek include the presence of non-native trout, human recreation, and hazard materials spills (USFS 2002). Rock climbing and hiking are common activities in the upper headwaters of Little Rock Creek, near the Angeles Crest Highway, where this unit occurs (Stephenson and Calcarone 1999). An unofficial trail has been blazed to a popular rock-climbing area and follows the creek where the frogs occur (USFS 2002). The USGS has recommended that this trail be diverted away from the stream to avoid disturbance to the frogs and habitat pollution and both the USFS and USGS have identified the need for educational signs to promote understanding of the mountain yellow-legged frog biology/ecology and its habitat requirements (USFS 2002; Backlin *et al.* 2004). Additional special management that may be required to minimize the threat of recreational activities includes closing, rerouting or reconstructing unauthorized trails; closing parking areas used for unauthorized trail access; relocating campsites and picnic tables adjacent to occupied creeks and removal of non-native trout detrimental to the mountain yellow-legged frog. The potential for hazardous materials spills is also a threat to the habitat within this subunit that may require special

management such as developing an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries (USFS 2002). There have also been requests for water removal for ski operations in the uppermost reaches, which can potentially dewater the stream (Service 1999, 2002; Stewart *et al.* 2000).

Little Rock Creek, with its extant mountain yellow-legged frog population, is a site chosen by the USGS to conduct a manipulation experiment in order to study the effects of trout removal on the establishment behavior of frogs. This was because trout are known predators of ranid frogs (Hayes and Jennings 1986, Backlin *et al.* 2004), and there is evidence that introduced trout restrict the distribution and abundance of mountain yellow-legged frogs (Bradford 1989, Bradford *et al.* 1994, Knapp and Matthews 2000, Knapp *et al.* 2003, Backlin *et al.* 2004). The project area encompasses the uppermost reaches of the creek, where it is divided into three consecutive sections by natural fish barriers. The first barrier is a natural waterfall, above which the main frog population occurs; below it are rainbow trout, and few mountain yellow-legged frog sightings have been recorded there regularly (Backlin *et al.* 2004). Further downstream, where there are only trout, a second natural barrier was enhanced by USFS in 2003 to prevent upstream movement by trout. Trout have been experimentally removed between the waterfall and the enhanced barrier on an annual basis (2002 to present) by electro-shocking and dip netting (Backlin *et al.* 2004). In 2002, 900 trout were removed, in 2003, 90 were removed, while in 2004, approximately 250 trout—mostly young of the year—were removed (T. Hovey, CDFG, pers. comm. 2005). Results from this experiment are thus inconclusive as the experiment is as yet incomplete: removal efforts have significantly depleted the trout population, but have not yet completely removed the trout from that section of the stream.

#### **Subunit 1D: Devil's Canyon (Angeles National Forest)**

Devil's Canyon is a rugged area within the San Gabriel Wilderness, which covers an area of 36,215 ac (14,667 ha) and varies in elevation from 1,600 to 8,200 ft. The lower elevations are covered with dense chaparral, which rapidly changes to pine and fir-covered slopes. Although wilderness permits are not required, Devil's Canyon has been relatively unstudied with regard to vertebrate resources. Because this area difficult to access, it was surveyed only

once by USGS in 2003 (Backlin *et al.* 2004), although the habitat has been characterized as excellent (Jennings 1993). The breeding adult population of mountain yellow-legged frog in Devil's Canyon between 2000 and 2003 was estimated at 20 (Backlin *et al.* 2004).

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. We do not currently have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. Therefore, the stream segments that are being proposed as critical habitat in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and the removal of non-native trout.

#### **Subunit 1E: Day Canyon (San Bernardino National Forest)**

Day Canyon/Day Creek occurs on the southeastern slope of the San Gabriel Mountains, and it flows southward off of Cucamonga Peak and empties into a large wash area above lowlands to the north of Los Angeles. The terrain is steep and characterized by extensive rock/boulder fields and limited soil development (USFS 2002). Although the mountain yellow-legged frog was first observed here in 1959 (Los Angeles County Museum), Day Canyon has not been surveyed extensively, *i.e.*, only 5 times since 1997. Surveys in 2003 failed to locate any frogs (Backlin, *et al.*, 2004), but did find rainbow trout in 2002; both years were drought years.

This subunit represents the southernmost area in the San Gabriel Mountains that was occupied at the time of listing. Rainbow trout have been observed in this canyon (Myers and Wilcox 1999), and therefore pose a threat to the species and its habitat within this subunit. Further, human recreational impacts such as shooting, dumping (including automobiles) and recreation (swimming, picnicking, etc.) have been documented for a number of drainages in the San Gabriel Mountains where mountain yellow-legged frog have been known to occur, including Day Canyon (Myers and Wilcox 1999). Further, this subunit drains into an area in close proximity to large urban centers, and we believe that recreation occurs regularly to some extent within this subunit. Therefore, the stream segments that are being proposed as

critical habitat in this subunit may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas and removal of non-native trout.

**Subunit 1F: San Gabriel River, East Fork, Iron Fork (Angeles National Forest)**

The two streams, Iron Fork and the South Fork of Iron Fork drain into the San Gabriel East Fork, and had apparently healthy populations of dozens of individuals from at least 1947, through 1975, and in 1994 (Ford 1975; Jennings 1994). However, since then, the area has been surveyed only in 2001 (Backlin, *et al.*, 2002), presumably due to the difficulty of access, and its steep terrain. The upper reaches of this unit are difficult to access, but the survey by USGS found that it contains habitat suitable for the mountain yellow-legged frog (A. Backlin, USGS, pers. comm. 2005). This subunit is important since it connects to the East Fork of the San Gabriel River near the important existing frog populations, while it is also located on the western side of the river, less than 5 km away from the Big Rock Creek. Iron Fork is thus important as it may constitute an important pathway between these two largest populations, while its inaccessibility and steepness may make it a refugia for frogs from trout; it is possible that frogs still occur in this area, particularly in the upper reaches as this area has not been recently surveyed on foot (Backlin, pers. comm.).

While we have information that these stream reaches were historically occupied, reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing and are not currently known to be occupied. However, this subunit is important since it connects to the East Fork of the San Gabriel River near the important existing frog populations, and it is located on the western side of the river, less than 5 km away from the Big Rock Creek. Iron Fork is thus important as it may constitute an important pathway between these two largest populations, while its inaccessibility and steepness may make it a refugia for frogs from trout; it is possible that frogs still occur in this area, particularly in the upper reaches as this area has not been recently surveyed on foot (A. Backlin, USGS, pers. comm. 2005).

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. We do not have documented information on recreational impacts to mountain yellow-legged frog habitat in

this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. This subunit may constitute an important alternative site for future mountain yellow-legged frog re-introductions in this region.

**Subunit 1G: Bear Creek, Upper Reaches (Off San Gabriel River, West Fork; Angeles National Forest)**

Bear Creek lies within the San Gabriel Wilderness Area and is accessible by an 11-mile trail, with trailheads on Highway 39, on the eastern border of the Wilderness. Mountain yellow-legged frog were first observed in the Bear Creek area in 1959 (Schoenherr 1976), and while the stream has only been surveyed twice since (Jennings 1993; Backlin, *et al.*, 2003). However, frogs may have been missed here due to the detectability of the species as shown by repeated surveys in Dark Canyon and other areas where there are also confirmed historical sightings, and repeated annual reports of no occurrences for up to three years, that is, until the populations are subsequently "re-discovered." Bear Creek is known to contain habitat suitable for the frog (described as excellent by Jennings 1994, 1999) and its upper reaches are located less than one mile east of Devil's Canyon, where an extant population of frogs was observed in 2005 (A. Backlin, USGS, pers. comm. 2005).

Threats to the species and its habitat within this subunit include the presence of non-native trout and recreational activities in its southern reaches. We do not have documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. Stream reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing (1987–2002) and are not currently known to be occupied. However this subunit is, may be important as a potential reintroduction site for mountain yellow-legged frog in this region.

**Critical Habitat Unit 2: San Bernardino Mountains Unit**

This unit is composed of stream segments within 3 subunits (2A–2C) of which 1 subunit (2A) was known to be occupied at the time of listing but currently assumed unoccupied, 1

subunit (2B) was found to be occupied subsequent to the listing determination, and 1 subunit (2C) is not known to be currently occupied but was historically occupied. This unit is located in the San Bernardino Mountains within the boundaries the San Bernardino National Forest in San Bernardino County.

**Subunit 2A: City Creek**

This subunit contains portions of both the west and east forks of City Creek in an unpopulated area of the San Bernardino Mountains where recreational pressure is very low. Backlin *et al.* (2003) identified suitable habitat for the mountain yellow-legged frog in 2003. The City Creek, West Fork has been surveyed less frequently than City Creek, East Fork but both adults and tadpoles have been observed at the confluence of the two streams and below the confluence as well (USFS and CDFG reports, 1998, 1999). The breeding adult population of mountain yellow-legged frog in City Creek, East Fork between 2002 and 2003 was estimated at 50 (confidence interval = 22–127; Backlin *et al.* 2004), representing one of the largest of the known populations of mountain yellow-legged frog in southern California.

Threats to the species and its habitat within this subunit include the presence of non-native trout, potentially high fuel loads, and the potential for hazardous spills along Highway 330 (USFS 2002). Non-native brown trout have been stocked 11 times between 1949 and 1979 (Backlin, *et al.*, 2004). Threats to the species in this subunit also include temporary habitat alteration resulting from flood and fire events. In 2003, the Old Fire burned the front range of the San Bernardino National Forest, including the watershed for City Creek, with subsequent run-off and scouring in late fall 2003. In addition, fire and debris deposition in December 2003 may have decimated much of the fish and frog populations here, although it is possible that some frogs survived (Backlin, *et al.*, 2004). In 2004, 11 juvenile frogs were salvaged from the East Fork and taken to the Los Angeles Zoo's captive rearing facility, where the juvenile frogs currently thrive (Dr. R. Smith, pers. comm. 2004). In their latest report, USGS (Backlin, *et al.*, 2004) recommends that these individuals be bred in captivity and new populations established in the wild from egg masses or tadpoles, in areas determined to be historically occupied where suitable conditions can be rendered through habitat restoration.

As a result of the 2003 fire, and the 2005 floods, parts of City Creek, East Fork may not currently contain all of the

primary constituent elements essential for the mountain yellow-legged frog, and hydrologists expect that the sediments will have been scoured and transported downstream. However, the portion of the creek north of Highway 32 contained many pools and the riparian habitat seemed intact, although the banks themselves were rocky and now lack soil substrate (Dr. E. Pierce, Service, pers. obs. 2004). Thus, at least in the northern portion of this creek, at least one or more of the primary constituent elements still exist. Over time, natural processes will restore the habitat; *i.e.*, the bank substrates and other original conditions. CDFG, USFS, USGS, CRES, and the Service are developing a long-term plan to potentially return the progeny of these 10 remaining frogs to City Creek-East Fork. Prior to the flooding, East Fork of City Creek supported approximately 50 adult frogs and was considered one of the three largest populations of the southern California mountain yellow-legged frog, however surveys since the floods have failed to yield additional frogs.

We consider this subunit to be unoccupied but essential to the conservation of the species because while the habitat does not currently contain sufficient PCEs we expect it to recover naturally from a natural event and because: (1) The habitat previously supported a large adult population; (2) this population was one of only two known occurrences in the San Bernardino Mountains; and (3) this stream would be the most likely candidate to reintroduce the progeny of the mountain yellow-legged frog held at the Los Angeles Zoo.

Stream segments that are being proposed as critical habitat in this subunit may require special management consideration or protection such removal of non-native trout species, restoration of habitat altered during recent fires and floods, the development of an action plan for prevention, notification, and containment of spills before they enter the stream or its tributaries, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

#### **Subunit 2B: Barton Creek, East Fork**

The East Fork of Barton Creek drains from the north-facing slope of the San Bernardino Mountain Wilderness area, off Shields Peak, and joins with Frog Creek to form the main stem of Barton Creek. The terrain is characterized by low relief, moderate to extensive soil development, and partly closed canopy (USFS 2002). In 1993, approximately 50

adults were observed in this creek during a year when the creek was flowing well (CNDDDB; R. McKernan, dir. San Bernardino County Museum, pers. obs.). Approximately 50 individual adults were observed here in 1993 (CNDDDB 2005), a year of significant precipitation.

Threats to the species and its habitat within this subunit include the presence of non-native brown trout, some habitat degradation due to urban development, and human recreation. The area above State Highway 38 and above Jenks Lake Road has a number of permanent dwellings or other structures, and has evidence of human disturbance. The main Barton Creek stem has been stocked with non-native trout six times between 1940 and 1955 (Backlin, *et al.*, 2004). Stream segments that are being proposed as critical habitat may require special management consideration or protection such as relocation of hiking trails or other access limitations in or near sensitive areas, restoration of habitat in disturbed areas, and removal of non-native trout.

#### **Subunit 2C: Whitewater River, North Fork (Upper Reaches)**

This portion of Whitewater River, which flows southward, occurs in the San Bernardino Wilderness area, on USFS lands. The first collection of the species was made on the desert slope between Cabezon and Whitewater in 1908. Subsequent fieldwork revealed mountain yellow-legged frog in Whitewater River in 1959, and while it has not been re-located, surveys have only been conducted 2001 and 2003, and only in the lower reaches of the river.

This area contains sufficient features such that we consider the area to be essential to the conservation of the species (A. Backlin, USGS, pers. comm. 2004). Stream reaches within this subunit were not known to be occupied by mountain yellow-legged frog at the time of listing (1987–2002) and are not currently known to be occupied. However, this area at least historically contained the southeastern most known population of mountain yellow-legged frog in the San Bernardino Mountains (A. Backlin, USGS, pers. comm. 2004). This subunit may constitute a potential re-introduction site for the mountain yellow-legged frog in this region.

Threats to the species and its habitat within this subunit include the presence of non-native trout and human recreation. Rainbow trout observed 2003 in the lower reaches; the river has been stocked with non-native trout two times between 1950 and 1967 (Backlin, *et al.*, 2004). Currently, we do not have

documented information on recreational impacts to mountain yellow-legged frog habitat in this subunit. However, due to the proximity of the San Bernardino Mountains to large urban centers and resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit.

#### **Critical Habitat Unit 3: San Jacinto Mountains Unit**

The San Jacinto Mountains Unit is composed of stream segments within 4 subunits (3A–3D) of which 2 subunits (3A & 3B) were known to be occupied at the time of listing and 2 subunits (3C & 3D) are not known to be currently occupied, but were historically occupied. This unit is located in the San Jacinto Mountains in the San Bernardino National Forest, Riverside County.

#### **Subunit 3A: San Jacinto River, North Fork (the Tributaries Black Mountain Creek, Fuller Mill Creek, and Dark Canyon)**

These populations represent the southernmost distribution of the mountain yellow-legged frog. In 2003, Fuller Mill Creek (9 adults) represented approximately 5 percent of the estimated population of 183 adults (Backlin, *et al.*, 2004) and is the largest remaining population in the San Jacinto Mountains. In 2003, 11 adults, 54 juveniles, and 18 first-year larvae were recorded from Dark Canyon (Backlin *et al.* 2004). Dark Canyon (54 juveniles) represented approximately 42 percent of the 128 juvenile mountain yellow-legged frog captured in 2003, although the small sample may not represent the true demographics of this population (Backlin *et al.* 2004). Dark Canyon, and its upper reaches, has been surveyed little (*i.e.* it was surveyed only once in 2003 because this area difficult to access) (Backlin *et al.* 2004). Both Fuller Mill Creek and Dark Canyon represent important sources of reproductive potential for the low population of the mountain yellow-legged frog and to maintain populations in the San Jacinto Mountains and minimize the risk of losing any population from a stochastic catastrophic event. The North Fork San Jacinto River at Black Mountain Creek was not known occupied at the time of listing, but has been surveyed rarely since 1994. The North Fork San Jacinto River has been stocked with non-native trout 36 times between 1948 and 1984 (Backlin, *et al.*, 2004).

Threats to the species and its habitat in this subunit include the presence of non-native trout, human recreation, and potentially high fuel loads (USFS 2002). Therefore stream segments within this

subunit may require special management consideration or protection such removal of non-native trout species, rerouting or reconstructing hiking trails or some recreational facilities located adjacent to occupied creeks, installing signing at trailheads and along access points to promote understanding of the species' biology and habitat requirements, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

### **Subunit 3B: Indian Creek (at Hall Canyon)**

In Indian Creek at Hall Canyon, mountain yellow-legged frogs have been observed since as early as 1908 (Lake Fulmor). Lake Fulmor has been stocked with non-native trout at least 24 times between 1957 and 1984 (Backlin, *et al.*, 2004). Since then, they have been observed in 1927, in the 1950's and again in 1995 (CNDDDB). Although extensive surveys have not been conducted here in the 2000s, water levels in these streams have apparently been very low due to drought conditions. The mountain yellow-legged frog was last observed in Hall Canyon in 1995. North Fork San Jacinto River and Hall Canyon constitute two of the four (50 percent) known occurrences of the mountain yellow-legged frog observed in the San Jacinto Mountains since 1995. Thus, these streams are important for the persistence of the mountain yellow-legged frog.

Threats to the mountain yellow-legged frog in this subunit include the potential presence of non-native trout and potentially high fuel loads (USFS 2002) and some human recreation activities. Therefore stream segments within this subunit may require special management consideration or protection such removal of non-native trout species, closing, rerouting or reconstructing campgrounds, hiking trails or picnic tables adjacent to occupied creeks, installing signage at trailheads, removal of non-native trout, and management of riparian vegetation in areas of high canopy cover or dense vegetation.

### **Subunit 3C: Tahquitz Creek (Upper Reaches, Including Willow Creek Tributary)**

The headwaters of this extensive river occur within the San Jacinto Wilderness area, where the subunit is located entirely. It flows from Mount San Jacinto eastward and empties near Palm Springs. The habitat has been characterized as suitable (Backlin *et al.* 2004). Mountain yellow-legged frogs were located in this stream as early as

1905, throughout the early 1900s and as late as 1970. Surveys of this currently unoccupied stream have been infrequent in recent years, due to its extensive length and ruggedness; the upper reaches and lower reaches have been surveyed four times in the 2000s, but not the mid-sections. Brown trout were found during recent surveys, and records show that the river was stocked with non-native trout 36 times between 1948 and 1984 (Backlin, *et al.*, 2004).

Threats to the species and its habitat in this subunit include trampling of habitat due to cows (CDFG survey comments, 2001) and the presence of non-native trout. In general, this stream has a low level of human recreational pressure. Tahquitz Creek may constitute an important alternative site for future mountain yellow-legged frog re-introductions in this region.

### **Subunit 3D: Andreas Creek (Upper Reaches)**

The headwaters of this river also occur within the San Jacinto Wilderness area, where the Sub-unit is located entirely, and flows from Mount San Jacinto eastward and empties near Palm Springs. Mountain yellow-legged frog were found in this currently unoccupied site as early as 1941, and as late as 1978 and were thought to persist there still in 1994 (Jennings and Hayes 1994b). Although Andreas Creek also has a low level of human recreational pressure, it has been stocked with non-native trout 9 times between 1949 and 1968 (Backlin *et al.* 2004). The stream habitat has been identified as suitable for the mountain yellow-legged frog (Backlin, *et al.*, 2004). The headwaters of both Andreas Creek and Tahquitz Creek occur relatively close to the upper drainage of the currently known population in the North Fork of San Jacinto, and may therefore constitute an important alternative site for future mountain yellow-legged frog re-introductions.

### **Effects of Critical Habitat Designation**

#### *Section 7 Consultation*

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the

habitat to be critical." We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species, and are relying on the statutory provisions of the Act in evaluating the effects of Federal actions on proposed critical habitat, pending further regulatory guidance. More detail on how we are currently interpreting this portion of the Act can be found in the Fish and Wildlife Service Director's December 9, 2004, memorandum, titled: Application of the "Destruction or Adverse Modification" Standard under Section 7(a)(2) of the Endangered Species Act.

Section 7(a) of the Act requires Federal agencies, including the Service, 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 proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse

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

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

Federal activities that may affect the mountain yellow-legged frog or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may

also jeopardize the continued existence of the mountain yellow-legged frog. Federal activities that, when carried out, may adversely affect critical habitat for the mountain yellow-legged frog include, but are not limited to:

(1) Sale, exchange, or lease of lands managed by the USFS or other Federal agencies. The sale, exchange, or lease of these lands could result in reduced management and conservation efforts to conserve the mountain yellow-legged frog;

(2) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(3) Regulation of water flows, water delivery, damming, diversion, stream channelization, water transfers, diversion, impoundment, groundwater withdrawal, or irrigation activities that causes barriers or deterrents to dispersal, inundates or drains habitat, or significantly converts habitat by the USFS, Bureau of Reclamation, Corps or other Federal agencies;

(4) Regulation of grazing, recreation, mining, or logging by the USFS or other Federal agencies. Mining, grazing, logging, land clearing, and recreational activities in or adjacent to the aquatic habitat could degrade, reduce, fragment or eliminate the habitat necessary for the growth and reproduction of the mountain yellow-legged frog.

(5) Funding and implementation of disaster relief projects by the Federal Emergency Management Agency (FEMA) and the Natural Resource Conservation Service's (NRCS) Emergency Watershed Program, including erosion control, flood control, stream bank repair to reduce the risk of loss of property. Such program activities could adversely affect breeding and non-breeding aquatic habitats of the subspecies by channelization or hardening of stream courses, removal of riparian vegetation used by the mountain yellow-legged frog for foraging or shelter;

(6) Funding and regulation of new road construction, paved areas, or road improvements by the Federal Highways Administration, the USFS, or other agencies. Road construction or improvement activities can adversely affect the mountain yellow-legged frog through creation of barriers to dispersal and increased traffic volume resulting in direct mortality, removal or alteration of aquatic habitat or hydrology necessary for growth and reproduction;

(7) Clearing of riparian vegetation by the USFS or other Federal agencies. These activities may lead to changes in water flows, levels, and quality that may

potentially degrade or eliminate habitats for the mountain yellow-legged frog;

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

(9) Discharges that may significantly alter water quality, chemistry, or temperature or significantly increase sediment deposition within the streams and other aquatic habitats used by the mountain yellow-legged frog. These discharges may alter water quality beyond the tolerances of the mountain yellow-legged frog adults, larvae, or eggs.

All lands proposed for designation as critical habitat lie within the geographic range of the southern California of the mountain yellow-legged frog in the San Bernardino, San Jacinto, and San Gabriel mountains. This proposed designation includes areas currently known to be occupied by the species, as well as several areas that were historically occupied, but where current occupancy is not known and assumed to be unoccupied. The occupied units are known to be used for foraging, sheltering, breeding, egg-laying, growth of larvae and juveniles, intra-specific communication, basking, dispersal, and migration. Federal agencies already consult with us on activities in areas currently occupied by the mountain yellow-legged frog, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. In the event critical habitat is designated, Federal agencies would need to ensure that their actions do not destroy or adversely modify critical habitat. For these areas where current occupancy has not been verified, we are only proposing to designate federally managed land as critical habitat. Thus, we do not anticipate substantial additional regulatory protection will result from the proposed critical habitat designation for areas known to be occupied by mountain yellow-legged frog, although consultation may need to be reinitiated. For those areas not currently known to be occupied by mountain yellow-legged frog, the Forest Service or other Federal agencies would need to consult with the Service under section 7(a)(2) of the Act.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Carlsbad Fish and

Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE 11th Ave, Portland, OR 97232 (telephone (503) 231-2063; facsimile (503)—231-6243).

*Application of 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act*

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species at the time of listing on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species at the time of listing that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species at the time of listing that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has reasonable expectation the management, protection or enhancement actions will continue for the foreseeable future.

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

will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are consider proposing designating as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered legally operative HCPs that cover the species. There are no tribal lands or lands owned by the Department of Defense within the areas proposed as critical habitat for the mountain yellow-legged frog in southern California.

*Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)*

To the extent that these areas meet the definition of critical habitat pursuant to section 3(5)(A) of the Act, we are proposing to exclude critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) Area under section 4(b)(2) of the Act. Non-Federal lands we are proposing to exclude from critical habitat include lands on Mount San Jacinto State Park owned by the California Department of Parks and Recreation (approximately 205 ac (83 ha)), private lands along Fuller Mill Creek (approximately 141 ac (57 ha)), lands owned by the County of Riverside Regional Parks and Open Space District at the confluence of Fuller Mill Creek and Dark Canyon (approximately 87 ac (35 ha)), and lands owned by the University of California at the James San Jacinto Mountains Reserve (approximately 54 ac (22 ha)).

The mountain yellow-legged frog is a covered species under the completed Western Riverside County MSHCP, and all but 141 ac (57 ha) of the 487 ac (197) of essential habitat identified within the MSHCP occur on reserve lands which will be conserved through the provisions of the Western Riverside County MSHCP. All private lands identified as essential mountain yellow-legged frog habitat occur on lands identified within the Western Riverside County MSHCP as Additional Reserve Lands. These Additional Reserve Lands must all be purchased by Riverside County as part of the HCP and will, over time, also be conserved through the

provisions of the MSHCP. Therefore, all lands identified as essential habitat will be conserved. All essential habitat identified within the Western Riverside County MSHCP falls in an area defined in the MSHCP as the San Jacinto Mountains Bioregion Core Area, within the MSHCP Conservation Area. This Core Area primarily occurs within the San Bernardino National Forest. This area includes the current known populations as well as suitable and historically occupied mountain yellow-legged frog habitat.

In addition to conserving all lands identified as essential habitat, the Western Riverside County MSHCP also identified 30,927 ac (12,516 ha) of modeled habitat for the mountain yellow-legged frog, far exceeding the 487 ac (197 ha) proposed for exclusion, and includes the following species-specific conservation objectives for this modeled habitat: *Objective 1:* Include within the MSHCP Conservation Area at least 335 ac (136 ha) of primary breeding habitat above 370 m (riparian scrub woodland and forest) within the San Jacinto Mountains. Primary breeding habitat for the yellow-legged frog includes aquatic habitats with gently sloping shore margins that receive some sunlight, and clear cool water; *Objective 2:* Include within the MSHCP Conservation Area the Core Areas above 370 m at the North Fork of the San Jacinto River (including Dark Canyon), Hall Canyon, and Fuller Mill Creek and other perennial water streams in the San Jacinto Mountains; *Objective 3:* Include within the MSHCP Conservation Area at least 32,399 ac (13,111 ha) of the secondary wooded habitat above 1,214 ft (370 m) (oak woodlands and forests and montane coniferous forest) within the North Fork of the San Jacinto River (including Dark Canyon), Hall Canyon, and Fuller Mill Creek and other perennial water streams in the San Jacinto Mountains; *Objective 4:* Surveys for this species will be conducted as part of the project review process for public and private projects within the amphibian species survey area where suitable habitat is present (see Amphibian Species Survey Area Map, Figure 6-3 of the MSHCP, Volume I). Mountain yellow-legged frog localities identified as a result of survey efforts shall be conserved in accordance with procedures described within Section 6.3.2, MSHCP, Volume 1; *Objective 5:* Within the MSHCP Conservation Area, Reserve Managers shall maintain or, if feasible, restore ecological processes (with particular emphasis on removing non-native predatory fish and bullfrogs) within

occupied habitat and suitable new areas within the Criteria Area. At a minimum, these areas will include areas above 1,214 ft (370 m) at the North Fork of the San Jacinto River (including Dark Canyon), Fuller Mill Creek, and Hall Canyon above Lake Fulmor; and *Objective 6*: Within the MSHCP Conservation Area, maintain successful reproduction as measured by the presence/absence of tadpoles, egg masses, or juvenile frogs once a year for the first five years after permit issuance and then as determined by the Reserve Management Oversight Committee as described in Section 6.6 (but not less frequently than every 8 years).

In the MSHCP, the mountain yellow-legged frog is considered an Additional Survey Needs and Procedures species. Until such time that the Additional Reserve Lands are assembled and conservation objectives for this species are met, surveys for the mountain yellow-legged frog will be conducted as part of the project review process for public and private projects where suitable habitat is present for the species within the "Mountain Yellow-legged Frog Amphibian Survey Area" (referred to here as Survey Area). Populations detected as a result of survey efforts will be avoided according to the procedures outlined in the Additional Survey Needs and Procedures (Section 6.3.2 of the Plan; *i.e.*, 90 percent of portions of property with long-term conservation value will be avoided until the species conservation objectives are met). For those locations found to contain large numbers of individuals or otherwise determined to be important to the overall conservation of the species, the Plan allows flexibility to acquire these locations for inclusion into the Additional Reserve Lands (Section 6, pp. 6–70). In addition, we anticipate that implementation of the Riparian/Riverine Areas and Vernal Pools policy (Chapter 6) will assist in providing some protection to this species' habitat by avoiding and/or minimizing direct impacts to riparian, riverine, and vernal pool habitats.

The Permittees will implement management and monitoring practices within the Additional Reserve Lands including surveys for the mountain yellow-legged frog. Cooperative management and monitoring are anticipated on PQP Lands. Within the MSHCP Conservation Area, Reserve Managers will determine if successful reproduction is occurring as measured by the presence/absence of tadpoles, egg masses, or juvenile frogs once a year for the first five years after permit issuance, and then as determined by the Reserve Managers Oversight Committee, but not

less frequently than every eight years. Surveys for the mountain yellow-legged frog will be conducted at least every eight years to verify occupancy at a minimum of 75 percent of the known locations. If a decline in the distribution of the mountain yellow-legged frog is documented below this threshold, management measures will be triggered, as appropriate, to meet the species-specific objectives identified in Section 9, Table 9.2 of the MSHCP. Other management activities listed in Section 5 will be conducted to benefit the mountain yellow-legged frog within the MSHCP Conservation Area. Within occupied habitat and suitable new areas, Reserve Managers will maintain ecological and hydrological processes, with particular emphasis on removing non-native predatory fish and bullfrogs. At a minimum, these areas will include areas above 1,214 ft (370 m) at the North Fork of the San Jacinto River (including Dark Canyon), Fuller Mill Creek, and Hall Canyon above Lake Fulmor (Section 5, Table 5.2 of the MSHCP).

As previously stated, all essential habitat will be conserved and managed with implementation of the Western Riverside County MSHCP. Consistent with the MSHCP, development could occur in up to an estimated 8,094 ac (3,275 ha) (26 percent) of MSHCP modeled mountain yellow-legged frog habitat. This habitat may have been historically occupied and may be impacted by urban development, water diversion/flood control projects, fill of aquatic habitat, construction projects, sand and gravel mining practices, recreation, and other urban and agricultural activities. In our biological opinion we did not anticipate that any individual frogs would be taken as a result of permit issuance, and should frogs be located during required surveys in the Survey Area, 90 percent of those portions of the property that provide long-term conservation will be avoided until it is demonstrated that conservation goals for the mountain yellow-legged frog are met.

#### (1) Benefits of Inclusion

A benefit of including an area within a critical habitat designation is the education of landowners and the public regarding the potential conservation value of these areas. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved for the mountain yellow-legged frog. The public outreach and environmental impact reviews required

under the National Environmental Policy Act for the Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by the mountain yellow-legged frog DPS. The Western Riverside County MSHCP identifies specific populations (Fuller Mill Creek and Dark Canyon) of the mountain yellow-legged frog for conservation. Therefore, we believe the education benefits which might arise from a critical habitat designation have largely already been generated as a result of the significant outreach for the Western Riverside County MSHCP. The County of Riverside Regional Parks and Open Space District and the James San Jacinto Mountains Reserve are aware of the conservation value of their lands for the mountain yellow-legged frog and designation of these lands as critical habitat would not provide an additional education benefit to these landowners. The USFS has acquired private lands along Fuller Mill Creek for the conservation of the mountain yellow-legged frog. Moreover, in our final listing rule (67 FR 44382) we noted that the mountain yellow-legged frog occurs on private lands along Fuller Mill Creek. Private landowners along Fuller Mill Creek may also already recognize the conservation value of their lands for the mountain yellow-legged frog based on the outreach resulting from the Western Riverside County MSHCP, land acquisition efforts by the USFS, and identification of these private lands in the listing rule for the mountain yellow-legged frog.

Another benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat may provide a different level of protection under section 7(a)(2) of the Act for the mountain yellow-legged frog that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of the endangered species. Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided is still a limitation on the harm that occurs as opposed to a requirement to provide a conservation benefit. We completed a section 7 consultation on the issuance of

the section 10(a)(1)(B) permit for the Western Riverside County MSHCP on June 22, 2004, and concluded that the mountain yellow-legged frog was adequately conserved and the issuance of the permit would not jeopardize the continued existence of this DPS. In our biological opinion, we anticipated that up to 8,094 acres of mountain-yellow legged frog habitat within the Plan Area would become unsuitable for this species. Based on implementation of the survey requirements and various policies of the Western Riverside County MSHCP, we anticipate that zero mountain yellow-legged frogs will be taken as a result of the issuance of the section 10(a)(1)(B) permit.

The areas excluded as critical habitat are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus which might adversely affect the critical habitat would require a consultation with us, as explained previously, in Effects of Critical Habitat Designation section. However, inasmuch as this area is currently occupied by the species, consultation for Federal activities which might adversely impact the species or would result in take would be required even without the critical habitat designation.

Primary constituent elements in these areas would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. However, inasmuch as nine of the fourteen subunits are occupied by the mountain yellow-legged frog, consultation for activities which may adversely affect the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act.

For the subunits that are not known to be occupied, there is still a requirement for a Federal agency to make an effect determination, and in the case of an effect, ensure that their Federal actions are not likely to jeopardize the continued existence of the species. For those subunits that are not known to be occupied, the designation of critical habitat would provide a benefit by clearly indicating to Federal action agencies the need to

consider the effects of their proposed activity on designated critical habitat and not just on the presence or absence of the mountain yellow-legged frog. In the case of subunits not known to be occupied that have been identified in this rule as providing for the long-term persistence and recovery of the species, the Service would evaluate the proposed Federal action using a conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. However, the 487 ac (197 ha) of non-Federal lands excluded from critical habitat are occupied by the mountain yellow-legged frog. None of the lands within the subunits that are not known to be occupied are excluded from critical habitat pursuant to section 4(b)(2) of the Act. This particular point is significant because, as we note earlier in the rule, where critical habitat is designated in unoccupied areas, it provides a benefit to the species.

The inclusion of these 487 ac (197 ha) of non-Federal land as critical habitat would provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. A benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands do not likely result in jeopardizing the continued existence of the species or result in the destruction or adverse modification of critical habitat. This additional analysis to determine destruction or adverse modification of critical habitat is likely to be small because the lands are not under Federal ownership and any Federal agency proposing a Federal action on these 487 ac (197 ha) of non-Federal lands would likely consider the conservation value of these lands as identified in the Western Riverside County MSHCP and take the necessary steps to avoid jeopardy or the destruction or adverse modification of critical habitat.

As discussed below, however, we believe that designating any non-Federal lands within existing PQP lands, proposed conceptual reserve design lands, and on lands targeted for conservation within the Western Riverside County MSHCP Plan Area as critical habitat would provide little additional educational and Federal regulatory benefits for the species. Because the excluded areas are occupied by the species, there must be consultation with the Service over any action which may affect these populations or that would result in take. The additional educational benefits that might arise from critical habitat

designation have been largely accomplished through the public review and comment of the environmental impact documents which accompanied the development of the Western Riverside County MSHCP and the recognition by some of the landowners of the presence of the endangered mountain yellow-legged frog and the value of their lands for the conservation and recovery of the species (County of Riverside Regional Parks and Open Space District, California Department of Parks and Recreation, and University of California at the James San Jacinto Mountains Reserve).

For 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Fish and Wildlife Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. However, in *Gifford Pinchot* the court noted the government, by simply considering the action's survival consequences, was reading the concept of recovery out of the regulation. The court, relying on the CFR definition of adverse modification, required the Service to determine whether recovery was adversely affected. The *Gifford Pinchot* decision arguably made it easier to reach an "adverse modification" finding by reducing the harm, affecting recovery, rather than the survival of the species. However, there is an important distinction: section 7(a)(2) limits harm to the species either through take or critical habitat. It does not require positive improvements or enhancement of the species status. Thus, any management plan which considers enhancement or recovery as the management standard will always provide more benefit than the critical habitat designation.

## (2) Benefits of Exclusion

The benefit of excluding the 487 ac (197 ha) of non-Federal land as critical habitat includes relieving private landowners, County of Riverside, California Department of Parks and Recreation, University of California, and Federal agencies from any additional regulatory burden that might be imposed by a critical habitat designation consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. The County of Riverside and the other local jurisdictions invested a significant amount of time and money to complete the Western Riverside County MSHCP with the expectation that the permitting for future development projects would be streamlined. A benefit of excluding these 487 ac (197 ha) would be to reduce any additional regulatory burden

(e.g., time and cost to comply with the reinitiation which could be triggered by the designation of critical habitat) or avoid the negative perception of increased regulation resulting from the designation of critical habitat for the mountain yellow-legged frog. Another benefit from excluding these lands is to maintain the partnerships developed among private landowners, County of Riverside, State of California, and the Service to implement the Western Riverside County MSHCP. Instead of using limited funds to comply with administrative consultation and designation requirements which can not provide protection beyond what is currently in place, the landowners within the 487 acres (197 ha) of land excluded from critical habitat could instead use their limited funds for the conservation of this species.

### (3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated excluding critical habitat from approximately 487 ac (197 ha) of non-Federal lands within existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSHCP for the mountain yellow-legged frog. Based on this evaluation, we find that the benefits of exclusion (avoid increased regulatory costs which could result from including those lands in this designation of critical habitat and direct limited funding to conservation actions with partners) of the lands containing features essential to the conservation of the mountain yellow-legged frog within the Western Riverside County MSHCP outweigh the benefits of inclusion (limited educational and regulatory benefits, which are largely otherwise provided for under the MSHCP) of portions of subunits 3A and 3B within the San Jacinto Mountains Unit as critical habitat. The benefits of inclusion of these 487 ac (197 ha) of non-Federal lands as critical habitat are lessened because of the significant level of conservation provided to the mountain yellow-legged frog under the Western Riverside MSHCP (conservation of core biological areas, avoidance of impacts through additional survey requirements, and management that likely exceed any conservation value provided by a critical habitat designation). In contrast, the benefits of exclusion of these 487 ac (197 ha) of non-Federal lands as critical habitat are increased because of the high level of cooperation by the County of Riverside and State of California to conserve this species and this partnership exceeds any conservation

value provided by a critical habitat designation. The Western Riverside County MSHCP will conserve all essential habitat, thereby providing equivalent protection to the PCEs as a critical habitat designation to identified essential habitat. In addition to conserving all essential habitat, the Western Riverside County MSHCP also provides for the management of all essential habitat and species-specific conservation objectives for all modeled mountain yellow-legged frog habitat within the Plan Area, therefore the Western Riverside County MSHCP provides more benefit than critical habitat designation.

### (4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these non-Federal lands within portions of Subunits A and B of the San Jacinto Mountains Unit will not result in extinction of the mountain yellow-legged frog since these lands will be conserved and managed for the benefit of this species pursuant to the Western Riverside County MSHCP. The Western Riverside MSHCP includes specific conservation objectives, survey requirements, avoidance and minimization measures, and management for the mountain yellow-legged frog that exceed any conservation value provided as a result of a critical habitat designation. Moreover, the 487 ac (197 ha) represents approximately four percent of the 8,290 ac (3,355 ha) of land proposed as critical habitat in this rule. While the populations in Fuller Mill Creek and Hall Canyon are important to the overall conservation of the species, the exclusion of portions of these populations will not result in the extinction of the species since the populations in the San Gabriel Mountains and San Bernardino are still proposed as critical habitat. In fact, the populations in the San Gabriel Mountains are larger than the populations at Fuller Mill Creek and Dark Canyon in the San Jacinto Mountains Unit.

The jeopardy standard of section 7 and routine implementation of habitat conservation through the section 7 process, also provide assurances that the species will not go extinct. In addition, the species is protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for the mountain yellow-legged frog in other areas that will be accorded the protection from adverse modification by

federal actions using the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot*. Additionally, the species occurs on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this factor acting in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acting in concert with protections afforded each species by the remaining critical habitat designation for the species, lead us to find that exclusion of these 487 ac (197 ha) within the Western Riverside County MSHCP will not result in extinction of the mountain yellow-legged frog.

### Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the mountain yellow-legged frog is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://carlsbad.fws.gov>, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public

hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

### Required Determinations

#### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic

analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the Internet Web site at <http://carlsbad.fws.gov> or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

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

Our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a

certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

#### *Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the mountain yellow-legged frog is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide

funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because the lands proposed for designation as critical habitat are on Federal lands within the Cleveland National Forest. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation

with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the mountain yellow-legged frog imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the mountain yellow-legged frog.

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

#### *National Environmental Policy Act*

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register**

on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands that contain habitat with features essential for the conservation of the southern California of the mountain yellow-legged frog. Therefore, no tribal lands have been included in the areas proposed as critical habitat for this population segment.

#### **References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### **Author(s)**

The primary author of this package is the Carlsbad Fish and Wildlife Office.

#### **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. In § 17.11(h), revise the entry for “frog, mountain yellow-legged” under “AMPHIBIANS” 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	17.95(d)	NA
* * * * *							

3. In § 17.95(d), add an entry for “Mountain yellow-legged frog” under “AMPHIBIANS” in the same order as this species appears in the List of Endangered and Threatened Wildlife in § 17.11(h) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*  
 (d) *Amphibians.*  
 \* \* \* \* \*

**MOUNTAIN YELLOW-LEGGED FROG**  
*(Rana muscosa)*

(1) Critical habitat units are depicted for Los Angeles, San Bernardino, and Riverside counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for the mountain yellow-legged frog are the habitat components that provide:

- (i) Water source(s) found between 1,214 ft (370 m) to 7,546 ft (2,300 m) in elevation that are permanent, to ensure that aquatic habitat for the species is available year-round. Water sources include, but are not limited to streams, rivers, perennial creeks (or permanent plunge pools within intermittent

creeks), pools (*i.e.*, a body of impounded water that is contained above a natural dam) and other forms of aquatic habitat. The water source should maintain a natural flow pattern including periodic natural flooding. Aquatic habitats that are used by mountain yellow-legged frog for breeding purposes must maintain water during the entire tadpole growth phase (which can be from 1–4 years duration). During periods of drought, or less than average rainfall, these breeding sites may not hold water long enough for individuals to complete metamorphosis, but they would still be considered essential breeding habitat in wetter years. Further, the aquatic habitat should include:

- a. Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel cobble, rock, and boulders;
- b. Water chemistry with a pH generally 6.6 to 9, dissolved oxygen varying from 23 to 28 percent and water temperatures during summer (June through August) ranging between 4.0 and 30.3 degrees Celsius;
- c. Streams or stream reaches between known occupied sites that can function

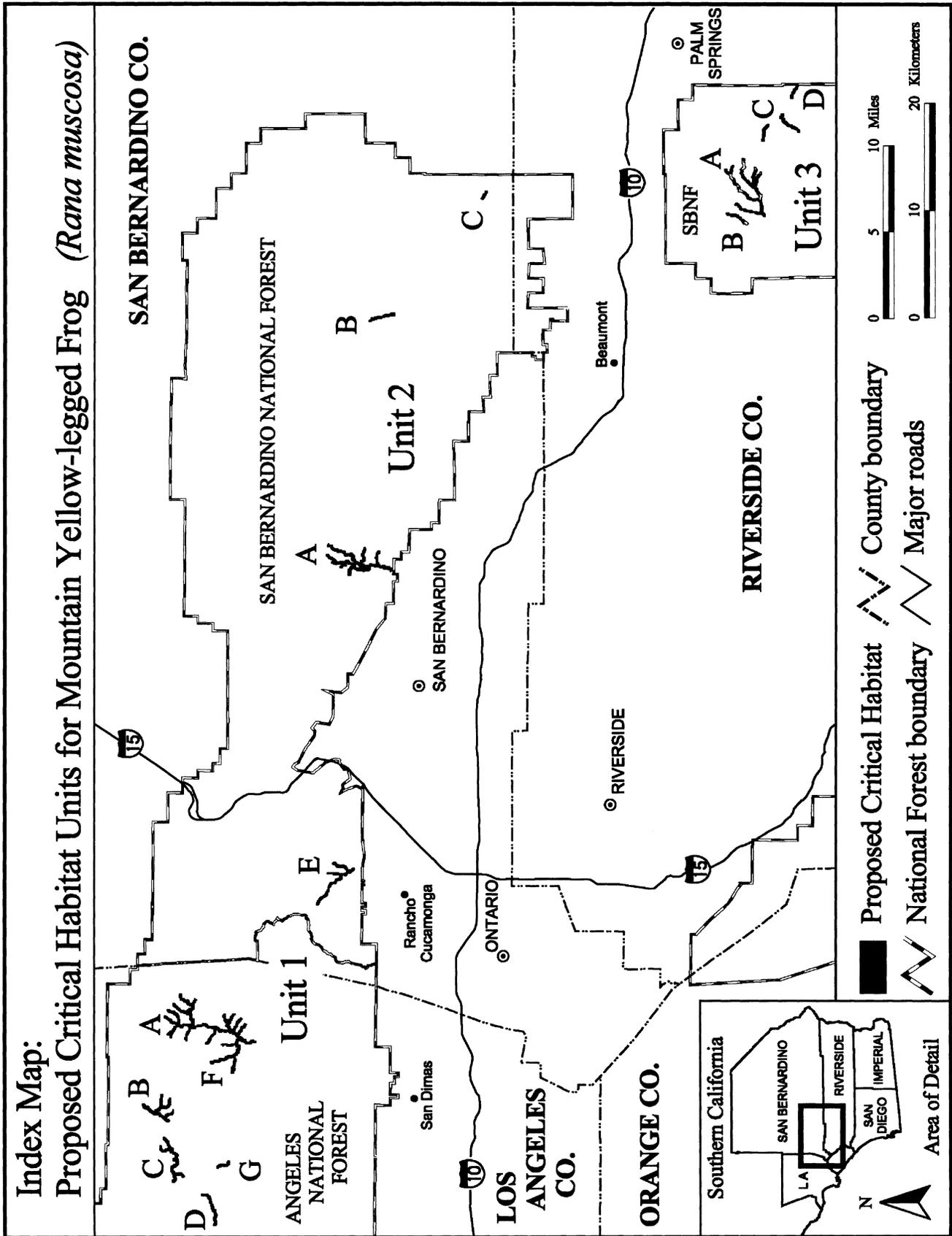
as corridors for adults and frogs for movement between aquatic habitats used as breeding and/or foraging sites.

(ii) Riparian habitat and upland vegetation (*e.g.*, ponderosa pine, montane hardwood-conifer, montane riparian woodlands, and chaparral) extending 262 feet (80 m) from each side of the centerline of each identified stream and its tributaries, that provides areas for feeding and movement of mountain yellow-legged frog, with a canopy overstory not exceeding 85 percent that allows sunlight to reach the stream and thereby providing basking areas for the species.

(3) Critical Habitat Map Units—Data layers defining map units were created on a base of USGS 7.5’ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(4) **Note:** Map 1 (index map of critical habitat units for the southern California distinct population segment of the mountain yellow-legged frog) follows:

**BILLING CODE 4310-55-P**



(5) Unit 1: San Gabriel Mountains, Los Angeles and San Bernardino Counties, California. From USGS 1:24,000 quadrangle maps Crystal Lake, Cucamonga Peak, Mount San Antonio Valyermo, and Waterman Mountain, California.

(i) Subunit 1A: San Gabriel River (East Fork), Angeles National Forest, Los Angeles County, California. Land bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 434100, 3803300; 434400, 3803300; 434400, 3803100; 434300, 3803100; 434300, 3802900; 434200, 3802800; 434100, 3802800; 434100, 3802600; 434000, 3802600; 434000, 3802500; 433800, 3802500; 433800, 3802200; 433700, 3802200; 433700, 3801900; 433600, 3801900; 433600, 3801800; 433800, 3801800; 433800, 3801900; 434200, 3801900; 434200, 3802000; 434400, 3802000; 434400, 3802100; 434500, 3802100; 434500, 3802300; 434600, 3802300; 434600, 3802500; 434700, 3802500; 434700, 3802800; 434800, 3802800; 434800, 3802900; 434900, 3802900; 434900, 3803000; 435100, 3803000; 435100, 3802700; 435000, 3802700; 435000, 3802600; 434900, 3802600; 434900, 3802200; 434800, 3802200; 434800, 3802100; 434700, 3802100; 434700, 3801900; 434600, 3801900; 434600, 3801800; 434400, 3801800; 434400, 3801700; 434000, 3801700; 434000, 3801600; 433400, 3801600; 433400, 3801500; 433300, 3801500; 433300, 3801400; 433400, 3801400; 433400, 3801300; 433500, 3801300; 433500, 3800400; 433900, 3800400; 433900, 3800500; 434000, 3800500; 434000, 3800600; 434200, 3800600; 434200, 3800500; 434300, 3800500; 434300, 3800600; 434500, 3800600; 434500, 3800900; 434600, 3800900; 434600, 3801200; 434700, 3801200; 434700, 3801500; 434800, 3801500; 434800, 3801600; 434900, 3801600; 434900, 3801800; 435000, 3801800; 435000, 3801900; 435100, 3801900; 435100, 3802000; 435200, 3802000; 435200, 3802100; 435300, 3802100; 435300, 3802200; 435400, 3802200; 435400, 3802300; 435500, 3802300; 435500, 3802400; 435800, 3802400; 435800, 3802200; 435700, 3802200; 435700, 3802100; 435600, 3802100; 435600, 3802000; 435500, 3802000; 435500, 3801900; 435400, 3801900; 435400, 3801800; 435300, 3801800; 435300, 3801700; 435200, 3801700; 435200, 3801600; 435100, 3801600; 435100, 3801500; 435000, 3801500; 435000, 3801100; 434900, 3801100; 434900, 3800900; 435000, 3800900; 435000, 3800800;

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 433800, 3802700; 433800, 3802800;  
 433900, 3802800; 433900, 3802900;  
 434000, 3802900; 434000, 3803100;  
 434100, 3803100; returning to 434100,  
 3803300.

(ii) Map depicting subunit 1A is found at paragraph (d)(10)(ii) of this section.

(6) Subunit 1B: Big Rock Creek (South Fork), Angeles National Forest, Los Angeles County, California.

(i) Subunit 1B: Big Rock Creek (South Fork). Land bounded by the following UTM NAD27 coordinates (E, N):

424400, 3805700; 424600, 3805700;  
 424600, 3805400; 424500, 3805400;  
 424500, 3805300; 424300, 3805300;  
 424300, 3805200; 424400, 3805200;  
 424400, 3805000; 424300, 3805000;  
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 424100, 3804800; 424000, 3804800;  
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 425400, 3803500; 424400, 3803500;  
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 425300, 3802600; 424500, 3802600;  
 424500, 3802700; 424300, 3802700;  
 424300, 3802800; 424200, 3802800;  
 424200, 3803000; 424100, 3803000;  
 424100, 3803700; 423900, 3803700;  
 423900, 3803800; 423800, 3803800;  
 423800, 3804000; 423700, 3804000;  
 423700, 3803700; 423500, 3803700;  
 423500, 3803600; 423400, 3803600;  
 423400, 3803400; 423300, 3803400;  
 423300, 3803200; 423500, 3803200;  
 423500, 3803000; 423600, 3803000;  
 423600, 3802600; 423700, 3802600;  
 423700, 3802500; 423800, 3802500;  
 423800, 3802400; 424000, 3802400;  
 424000, 3802300; 423500, 3802300;  
 423500, 3802400; 423400, 3802400;  
 423400, 3802800; 423300, 3802800;  
 423300, 3802900; 423200, 3802900;  
 423200, 3803000; 423100, 3803000;  
 423100, 3803100; 423000, 3803100;  
 423000, 3803000; 422900, 3803000;

422900, 3802800; 422800, 3802800;  
 422800, 3802700; 422700, 3802700;  
 422700, 3802800; 422600, 3802800;  
 422600, 3803100; 422700, 3803100;  
 422700, 3803200; 422800, 3803200;  
 422800, 3803300; 422900, 3803300;  
 422900, 3803400; 423000, 3803400;  
 423000, 3803500; 423100, 3803500;  
 423100, 3803600; 423200, 3803600;  
 423200, 3803900; 423400, 3803900;  
 423400, 3804500; 423500, 3804500;  
 423500, 3804600; 423600, 3804600;  
 423600, 3804700; 423700, 3804700;  
 423700, 3804900; 423800, 3804900;  
 423800, 3805000; 423900, 3805000;  
 423900, 3805100; 424000, 3805100;  
 424000, 3805400; 424100, 3805400;  
 424100, 3805500; 424200, 3805500;  
 424200, 3805600; 424400, 3805600;  
 returning to 424400, 3805700.

(ii) Map depicting subunit 1B is found at paragraph (d)(10)(ii) of this section.

(7) Subunit 1C: Little Rock Creek, Angeles National Forest, Los Angeles County, California.

(i) Subunit 1C: Upper Little Rock Creek. Land bounded by the following UTM NAD27 coordinates (E, N):

419500, 3803800; 420000, 3803800;  
 420000, 3803600; 419700, 3803600;  
 419700, 3803500; 419600, 3803500;  
 419600, 3803400; 419500, 3803400;  
 419500, 3803300; 419600, 3803300;  
 419600, 3803200; 419700, 3803200;  
 419700, 3802900; 420000, 3802900;  
 420000, 3803000; 420200, 3803000;  
 420200, 3803100; 420400, 3803100;  
 420400, 3803200; 420500, 3803200;  
 420500, 3803300; 420600, 3803300;  
 420600, 3803400; 420900, 3803400;  
 420900, 3803200; 420800, 3803200;  
 420800, 3803100; 420700, 3803100;  
 420700, 3803000; 420600, 3803000;  
 420600, 3802900; 420500, 3802900;  
 420500, 3802800; 420100, 3802800;  
 420100, 3802700; 419900, 3802700;  
 419900, 3802600; 419800, 3802600;  
 419800, 3802400; 419700, 3802400;  
 419700, 3802300; 419500, 3802300;  
 419500, 3802400; 419400, 3802400;  
 419400, 3802300; 419300, 3802300;  
 419300, 3802100; 419200, 3802100;  
 419200, 3802000; 419100, 3802000;  
 419100, 3801900; 419000, 3801900;  
 419000, 3801800; 418800, 3801800;  
 418800, 3801900; 418500, 3801900;  
 418500, 3801800; 417900, 3801800;  
 417900, 3801900; 417800, 3801900;  
 417800, 3802000; 417700, 3802000;  
 417700, 3802100; 417600, 3802100;  
 417600, 3802300; 417500, 3802300;  
 417500, 3802400; 417300, 3802400;  
 417300, 3802300; 417200, 3802300;  
 417200, 3802200; 417000, 3802200;  
 417000, 3801400; 416900, 3801400;  
 416900, 3801300; 416800, 3801300;  
 416800, 3801200; 416700, 3801200;  
 416700, 3801100; 416600, 3801100;  
 416600, 3801200; 416500, 3801200;

416500, 3801400; 416700, 3801400;  
 416700, 3802100; 416500, 3802100;  
 416500, 3802000; 416200, 3802000;  
 416200, 3802100; 416100, 3802100;  
 416100, 3802200; 416000, 3802200;  
 416000, 3802500; 416300, 3802500;  
 416300, 3802300; 416500, 3802300;  
 416500, 3802400; 416900, 3802400;  
 416900, 3802500; 417100, 3802500;  
 417100, 3802600; 417800, 3802600;  
 417800, 3802400; 417900, 3802400;  
 417900, 3802300; 418000, 3802300;  
 418000, 3802100; 418300, 3802100;  
 418300, 3802400; 418600, 3802400;  
 418600, 3802200; 419000, 3802200;  
 419000, 3802400; 419100, 3802400;  
 419100, 3802500; 419200, 3802500;  
 419200, 3802700; 419400, 3802700;  
 419400, 3803100; 419300, 3803100;  
 419300, 3803600; 419400, 3803600;  
 419400, 3803700; 419500, 3803700;  
 returning to 419500, 3803800.

(ii) Map depicting subunit 1C is found at paragraph (d)(10)(ii) of this section.

(8) Subunit 1D: Devil's Canyon (north of San Gabriel River, West Fork), Angeles National Forest, Los Angeles County, California.

(i) Subunit 1D: Devil's Canyon. Land bounded by the following UTM NAD27 coordinates (E, N): 414500, 3799300; 414700, 3799300; 414700, 3798600; 414600, 3798600; 414600, 3798500; 414500, 3798500; 414500, 3798400; 414300, 3798400; 414300, 3798300; 413900, 3798300; 413900, 3798200; 413600, 3798200; 413600, 3798100; 413400, 3798100; 413400, 3798000; 413000, 3798000; 413000, 3797800; 412600, 3797800; 412600, 3797700; 412500, 3797700; 412500, 3797600; 412300, 3797600; 412300, 3797700;

412100, 3797700; 412100, 3797800;  
 411800, 3797800; 411800, 3797700;  
 411400, 3797700; 411400, 3797800;  
 411300, 3797800; 411300, 3798100;  
 411500, 3798100; 411500, 3798000;  
 411800, 3798000; 411800, 3798100;  
 412200, 3798100; 412200, 3798000;  
 412300, 3798000; 412300, 3797900;  
 412400, 3797900; 412400, 3798000;  
 412700, 3798000; 412700, 3798100;  
 412800, 3798100; 412800, 3798200;  
 413100, 3798200; 413100, 3798300;  
 413400, 3798300; 413400, 3798400;  
 413700, 3798400; 413700, 3798500;  
 414100, 3798500; 414100, 3798600;  
 414200, 3798600; 414200, 3798700;  
 414400, 3798700; 414400, 3798800;  
 414500, 3798800; returning to 414500, 3799300.

(ii) Map depicting subunit 1D is found at paragraph (d)(10)(ii) of this section.

(9) Subunit 1F: San Gabriel River, East Fork, Iron Fork, Los Angeles County, California.

(i) Subunit 1F: San Gabriel River, East Fork and Iron Fork. Land bounded by the following UTM NAD27 coordinates (E, N): 429100, 3798400; 429400, 3798400; 429400, 3798000; 429500, 3798000; 429500, 3797400; 429700, 3797400; 429700, 3797100; 429600, 3797100; 429600, 3797000; 429700, 3796800; 429800, 3796800; 429800, 3796700; 429900, 3796700; 429900, 3796500; 430000, 3796500; 430000, 3796000; 430100, 3795800; 430200, 3795800; 430200, 3795500; 430100, 3795500; 430100, 3795400; 430000, 3795400; 430000, 3795600; 429600, 3795600; 429600, 3795500; 429300, 3795500; 429300, 3795600; 429000,

3795600; 429000, 3795700; 428700, 3795700; 428700, 3795800; 428600, 3795800; 428600, 3795700; 428300, 3795700; 428300, 3795800; 428000, 3795800; 428000, 3796100; 428700, 3796100; 428700, 3796000; 428900, 3796000; 428900, 3795900; 429400, 3795900; 429400, 3795800; 429800, 3795800; 429800, 3796000; 429700, 3796000; 429600, 3796400; 429600, 3796600; 429500, 3796600; 429500, 3796800; 429400, 3796800; 429400, 3797200; 429300, 3797200; 429300, 3797300; 429200, 3797300; 429200, 3798000; 429000, 3798000; 429100, 3798400; returning to 429100, 3798400.

(ii) Map depicting subunit 1F is found at paragraph (d)(10)(ii) of this section.

(10) Subunit 1G: Bear Creek (off San Gabriel River, West Fork), Angeles National Forest, Los Angeles County, California.

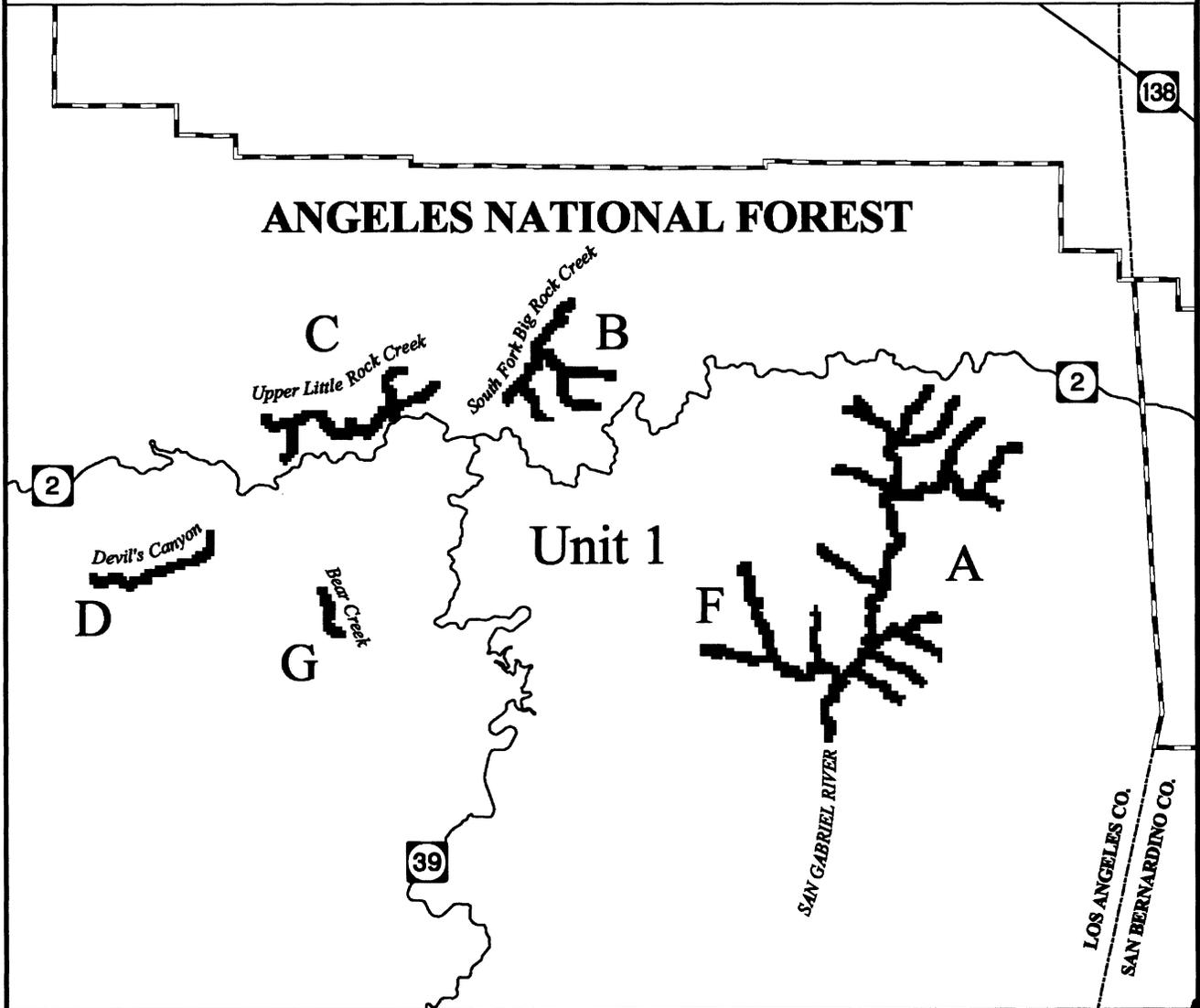
(i) Subunit 1G: Bear Creek, Upper Reaches. Land bounded by the following UTM NAD27 coordinates (E, N): 417500, 3797700; 417800, 3797700; 417800, 3797500; 417900, 3797500; 417900, 3797300; 418000, 3797300; 418000, 3796800; 417900, 3796800; 417900, 3796700; 418000, 3796700; 418000, 3796600; 418200, 3796600; 418200, 3796500; 418300, 3796500; 418300, 3796300; 417900, 3796300; 417900, 3796400; 417800, 3796400; 417800, 3796500; 417700, 3796500; 417700, 3797200; 417600, 3797200; 417600, 3797500; 417500, 3797500; returning to 417500, 3797700.

(ii) Map 2 of Unit 1, with subunits 1A, 1B, 1C, 1D, 1F, and 1G, follows:

**BILLING CODE 4310-55-P**

# Proposed Critical Habitat for Mountain Yellow-legged Frog (*Rana muscosa*)

Unit 1, Subunits A-D and F-G, San Gabriel Mountains, Los Angeles County, CA.



**Legend:**

- Proposed Critical Habitat (thick black line)
- National Forest boundary (dashed line)
- County boundary (dotted line)
- Major roads (solid line)

**Scale:**

4 0 4 Miles

4 0 4 Kilometers

**North Arrow:** N

(11) Subunit 1E: Day Canyon, San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 1E: Day Canyon. Land bounded by the following UTM NAD27 coordinates (E, N): 446400, 3786900; 446700, 3786900; 446700, 3786800; 446900, 3786800; 446900, 3786700; 447100, 3786700; 447100, 3786600; 447200, 3786600; 447200, 3786500; 447300, 3786500; 447300, 3786400; 447400, 3786400; 447400, 3786200; 447500, 3786200; 447500, 3786100; 447600, 3786100; 447600, 3786000; 447700, 3786000; 447700, 3785900; 447900, 3785900; 447900, 3785800; 448100, 3785800; 448100, 3785700; 448400, 3785700; 448400, 3785600; 448600, 3785600; 448600, 3785500; 448800, 3785500; 448800, 3785400; 448900, 3785400; 448900, 3785000; 449000, 3785000; 449000, 3784900; 449200, 3784900; 449200, 3784800; 449300, 3784800; 449300, 3784600; 449400, 3784600; 449400, 3784300; 449500, 3784300; 449500, 3784400; 449700, 3784400; 449700, 3785100;

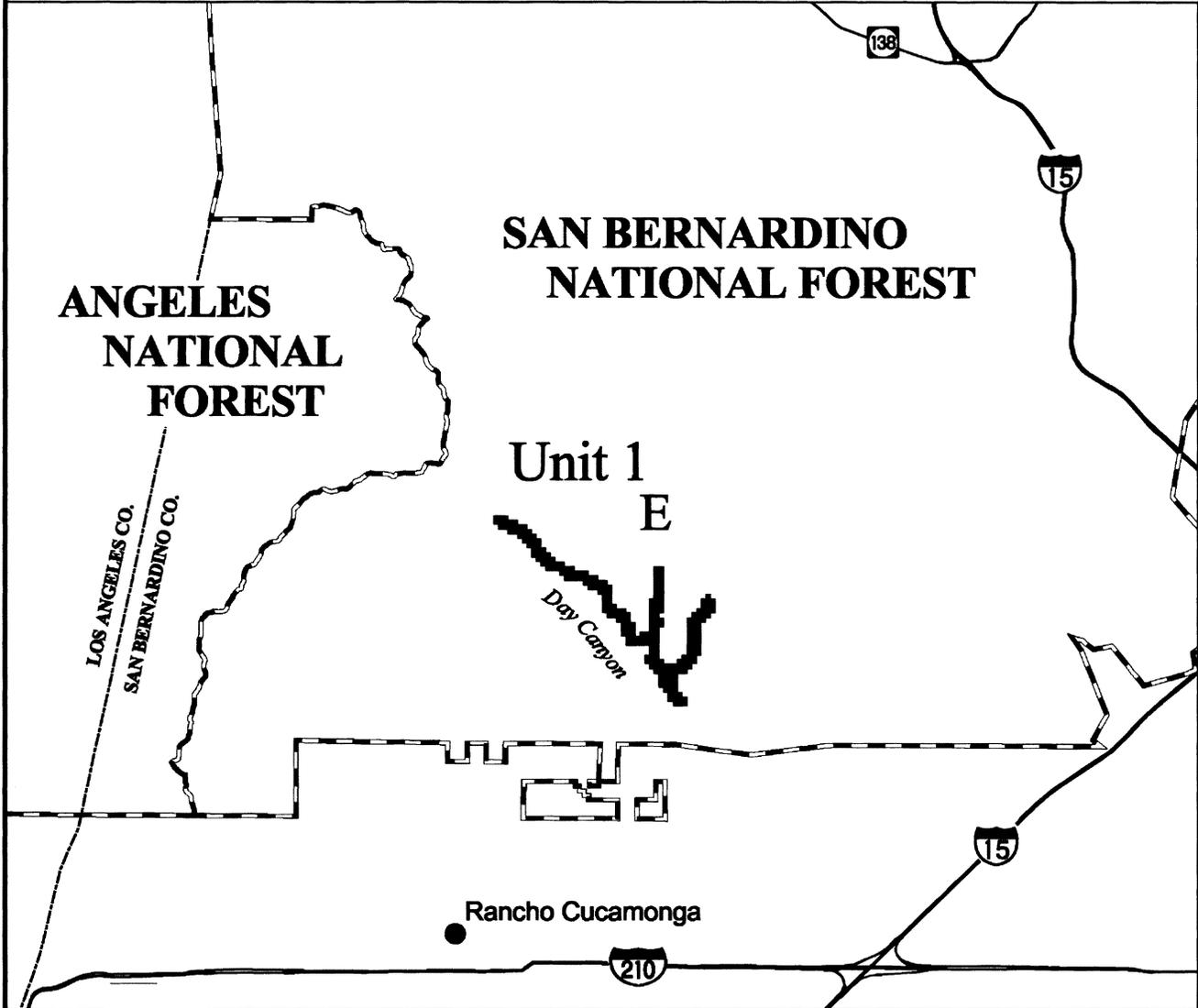
449800, 3785100; 449800, 3785800; 450000, 3785800; 450000, 3784800; 449900, 3784800; 449900, 3784700; 450000, 3784700; 450000, 3784500; 449900, 3783800; 450000, 3783800; 450000, 3783700; 450300, 3783700; 450300, 3783800; 450400, 3783800; 450400, 3783900; 450500, 3783900; 450500, 3784700; 450600, 3784700; 450600, 3784800; 450700, 3784800; 450700, 3784900; 450800, 3784900; 450800, 3785100; 450900, 3785100; 450900, 3785200; 451000, 3785200; 451000, 3785100; 451100, 3785100; 451100, 3784800; 451000, 3784800; 451000, 3784700; 450900, 3784700; 450900, 3784600; 450800, 3784600; 450800, 3783900; 450700, 3783900; 450700, 3783700; 450600, 3783700; 450600, 3783600; 450500, 3783600; 450500, 3783500; 450300, 3783500; 450300, 3783100; 450400, 3783100; 450400, 3783000; 450500, 3783000; 450500, 3782800; 450200, 3782800; 450200, 3782900; 450100, 3782900; 450100, 3783100; 450000, 3783100; 450000, 3783200;

449900, 3783200; 449900, 3783500; 449800, 3783500; 449800, 3783600; 449700, 3783600; 449700, 3783700; 449600, 3783700; 449600, 3783900; 449700, 3783900; 449700, 3784100; 449200, 3784100; 449200, 3784300; 449100, 3784300; 449100, 3784600; 449000, 3784600; 449000, 3784700; 448800, 3784700; 448800, 3784800; 448700, 3784800; 448700, 3785200; 448600, 3785200; 448600, 3785300; 448400, 3785300; 448400, 3785400; 448300, 3785400; 448300, 3785500; 447900, 3785500; 447900, 3785600; 447800, 3785600; 447800, 3785700; 447500, 3785700; 447500, 3785800; 447400, 3785800; 447400, 3785900; 447300, 3785900; 447300, 3786000; 447200, 3786000; 447200, 3786200; 447100, 3786200; 447100, 3786300; 447000, 3786300; 447000, 3786400; 446900, 3786400; 446900, 3786500; 446700, 3786500; 446700, 3786600; 446500, 3786600; 446500, 3786700; 446400, 3786700; returning to 446400, 3786900.

(ii) **Note:** Map 3 of subunit 1E follows:

# Proposed Critical Habitat for Mountain Yellow-legged Frog (*Rana muscosa*)

## Unit 1, Subunit E, San Gabriel Mountains, San Bernardino County, CA.



-  Proposed Critical Habitat
-  National Forest boundary
-  County boundary
-  Major roads

4 0 4 Miles

4 0 4 Kilometers



(12) Unit 2: San Bernardino Mountains, San Bernardino National Forest, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear Lake, Catclaw Flat and Harrison Mountain, California. Subunit 2A: City Creek, San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 2A: City Creek, East and West Forks. Land bounded by the following UTM NAD27 coordinates (E, N): 483800, 3785100; 483900, 3785100; 483900, 3785200; 484000, 3785200; 484000, 3785400; 484100, 3785400; 484100, 3785600; 484200, 3785600; 484200, 3785700; 484300, 3785700; 484300, 3785800; 484400, 3785800; 484400, 3785900; 484600, 3785900; 484600, 3785600; 484500, 3785600; 484500, 3785500; 484400, 3785500; 484400, 3785400; 484300, 3785400; 484300, 3785200; 484200, 3785200; 484200, 3785000; 484100, 3785000; 484100, 3784900; 484000, 3784900; 484000, 3784800; 483900, 3784800; 483900, 3784700; 483800, 3784700; 483800, 3784400; 483900, 3784400; 483900, 3784000; 483700, 3784000; 483700, 3783900; 483900, 3783900; 483900, 3783800; 484000, 3783800; 484000, 3783400; 483900, 3783400; 483900, 3783300; 483700, 3783300; 483700, 3782900; 483900, 3782900; 483900, 3783100; 484000, 3783100; 484000, 3783200; 484300, 3783200; 484300, 3783100; 484400, 3783100; 484400, 3783400; 484500, 3783400; 484500, 3783500; 484400, 3783500; 484400, 3783900; 484500, 3783900; 484500, 3784000; 484700, 3784000; 484700, 3784100; 484800, 3784100; 484800, 3784700; 484900, 3784700; 484900, 3785000; 485000, 3785000; 485000, 3785200; 485100, 3785200; 485100, 3785300; 485200, 3785300; 485200, 3785400; 485400, 3785400; 485400, 3785800; 485700, 3785800; 485700, 3785700; 485800, 3785700; 485800, 3785600; 485600, 3785600;

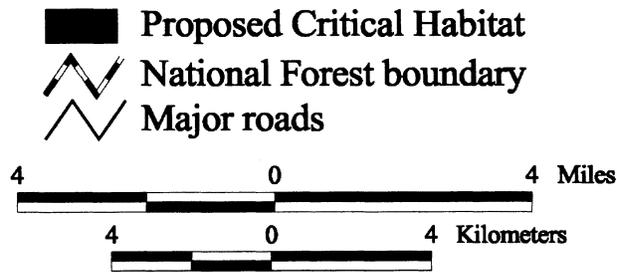
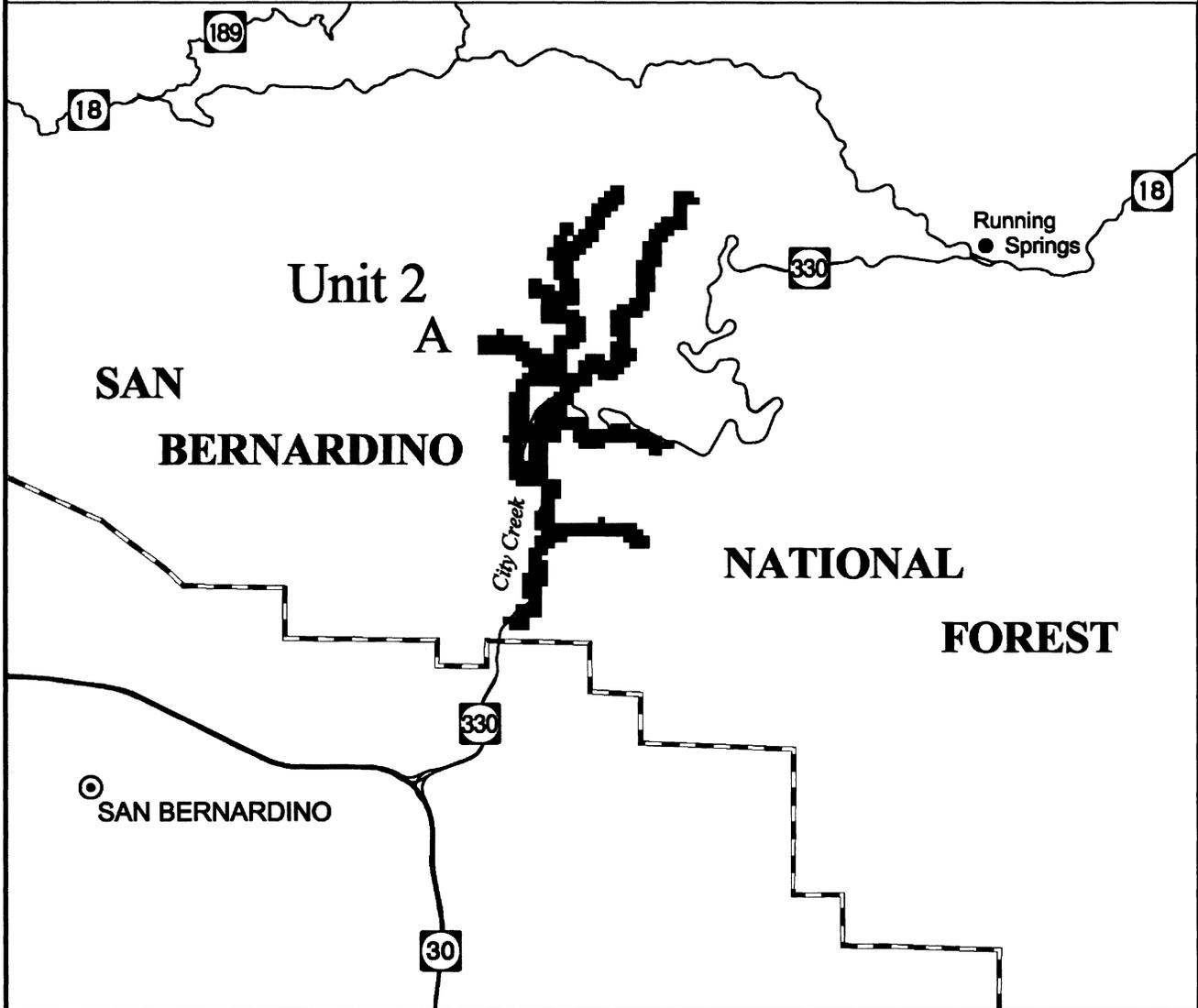
485600, 3785200; 485400, 3785200; 485400, 3785100; 485300, 3785100; 485300, 3785000; 485200, 3785000; 485200, 3784600; 485100, 3784600; 485100, 3784200; 485000, 3784200; 485000, 3783900; 484900, 3783900; 484900, 3783800; 484700, 3783800; 484700, 3783300; 484800, 3783300; 484800, 3783100; 484700, 3783100; 484700, 3783000; 484600, 3783000; 484600, 3782900; 484500, 3782900; 484500, 3782800; 484200, 3782800; 484200, 3782900; 484100, 3782900; 484100, 3782700; 483900, 3782700; 483900, 3782600; 483800, 3782600; 483800, 3782400; 483700, 3782400; 483700, 3782200; 484000, 3782200; 484000, 3782000; 484400, 3782000; 484400, 3782100; 484700, 3782100; 485000, 3782000; 485000, 3781900; 485000, 3781900; 485200, 3781800; 485400, 3781800; 485400, 3781700; 485200, 3781700; 485200, 3781600; 485000, 3781600; 485000, 3781700; 484800, 3781700; 484800, 3781800; 484300, 3781800; 483900, 3781700; 483900, 3781800; 483800, 3781800; 483800, 3782000; 483600, 3782000; 483600, 3781800; 483400, 3781800; 483400, 3781200; 483600, 3781200; 483600, 3780900; 483500, 3780900; 483500, 3780500; 484200, 3780500; 484200, 3780600; 484300, 3780600; 484300, 3780500; 484800, 3780500; 484900, 3780400; 484900, 3780400; 484900, 3780300; 485000, 3780300; 485000, 3780100; 484700, 3780100; 484700, 3780200; 484600, 3780200; 484600, 3780300; 483700, 3780300; 483700, 3780200; 483500, 3780200; 483500, 3780100; 483400, 3780100; 483400, 3780000; 483300, 3780000; 483300, 3779900; 483400, 3779900; 483400, 3779500; 483300, 3779500; 483300, 3779000; 483100, 3779000; 483100, 3778800; 482800, 3778800; 482800, 3778900; 482700, 3778900; 482700, 3779000; 482900, 3779000; 482900, 3779200; 483100, 3779200;

483100, 3779300; 483000, 3779300; 483000, 3779700; 483100, 3779700; 483100, 3780100; 483200, 3780100; 483200, 3780300; 483300, 3780300; 483300, 3780400; 483200, 3780400; 483200, 3780700; 483300, 3780700; 483300, 3781100; 482900, 3781100; 482900, 3781200; 482800, 3781200; 482800, 3781800; 482700, 3781800; 482700, 3781900; 482800, 3781900; 482800, 3782600; 482900, 3782600; 482900, 3782800; 483000, 3782800; 483000, 3782900; 483100, 3782900; 483100, 3783000; 483000, 3783000; 483000, 3783100; 482900, 3783100; 482900, 3783200; 482300, 3783200; 482300, 3783500; 482600, 3783500; 482600, 3783600; 482700, 3783600; 483000, 3783500; 483000, 3783400; 483100, 3783400; 483100, 3783300; 483300, 3783300; 483300, 3783200; 483500, 3783200; 483500, 3783500; 483700, 3783500; 483700, 3783700; 483300, 3783700; 483300, 3784100; 483100, 3784100; 483100, 3784400; 483300, 3784300; 483500, 3784300; 483500, 3784200; 483600, 3784200; 483600, 3784400; 483500, 3784400; 483500, 3784700; 483400, 3784700; 483400, 3784900; 483500, 3784900; 483500, 3785100; 483600, 3785100; 483600, 3785300; 483800, 3785300; returning to 483800, 3785100; excluding land bounded by 483700, 3785100; 483800, 3785100; 483800, 3785000; 483700, 3785000; 483700, 3785100; land bounded by 483100, 3782700; 483600, 3782700; 483600, 3782600; 483500, 3782600; 483500, 3782500; 483400, 3782500; 483400, 3782400; 483300, 3782400; 483300, 3782300; 483200, 3782300; 483200, 3782100; 483100, 3782100; 483100, 3782700; and land bounded by 483000, 3781800; 483100, 3781800; 483100, 3781500; 483000, 3781500; 483000, 3781800.

(ii) **Note:** Map 4 of subunit 2A follows:

# Proposed Critical Habitat for Mountain Yellow-legged Frog (*Rana muscosa*)

Unit 2, Subunit A, San Bernardino Mountains, San Bernardino County, CA.



(13) Subunit 2B: Barton Creek (East Fork), San Bernardino National Forest, San Bernardino County, California.

(i) Subunit 2B: Barton Creek (East Fork). Land bounded by the following UTM NAD27 coordinates (E, N):

510000, 3781300; 510100, 3781300;  
510100, 3781200; 510200, 3781200;  
510200, 3781100; 510400, 3781100;  
510400, 3780700; 510500, 3780700;  
510500, 3780400; 510600, 3780400;  
510600, 3780200; 510500, 3780200;  
510500, 3780100; 510600, 3780100;  
510600, 3779800; 510700, 3779800;  
510700, 3779600; 510800, 3779600;  
510800, 3779400; 510700, 3779400;  
510700, 3779300; 510800, 3779300;

510800, 3779000; 510900, 3779000;  
510900, 3778500; 510600, 3778500;  
510600, 3779100; 510500, 3779100;  
510500, 3779600; 510400, 3779600;  
510400, 3779900; 510300, 3779900;  
510300, 3780400; 510200, 3780400;  
510200, 3780700; 510100, 3780700;  
510100, 3781000; 510000, 3781000;  
returning to 510000, 3781300.

(ii) Map depicting subunit 2B is found at paragraph (d)(14)(ii) of this section.

(14) Subunit 2C: Whitewater River (North Fork), San Bernardino National Forest, San Bernardino County, California.

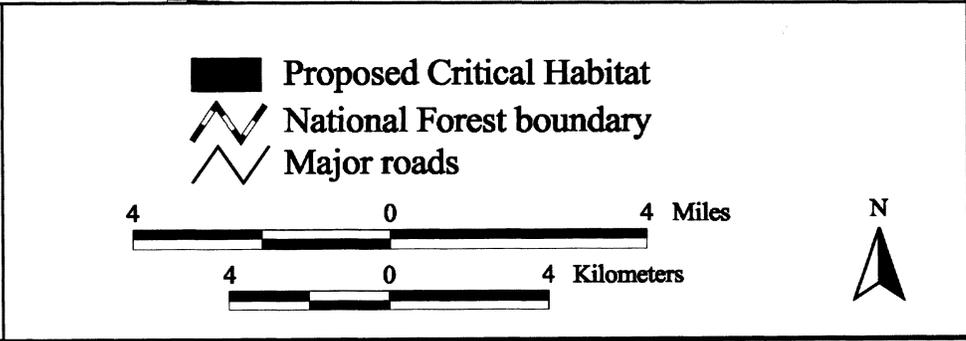
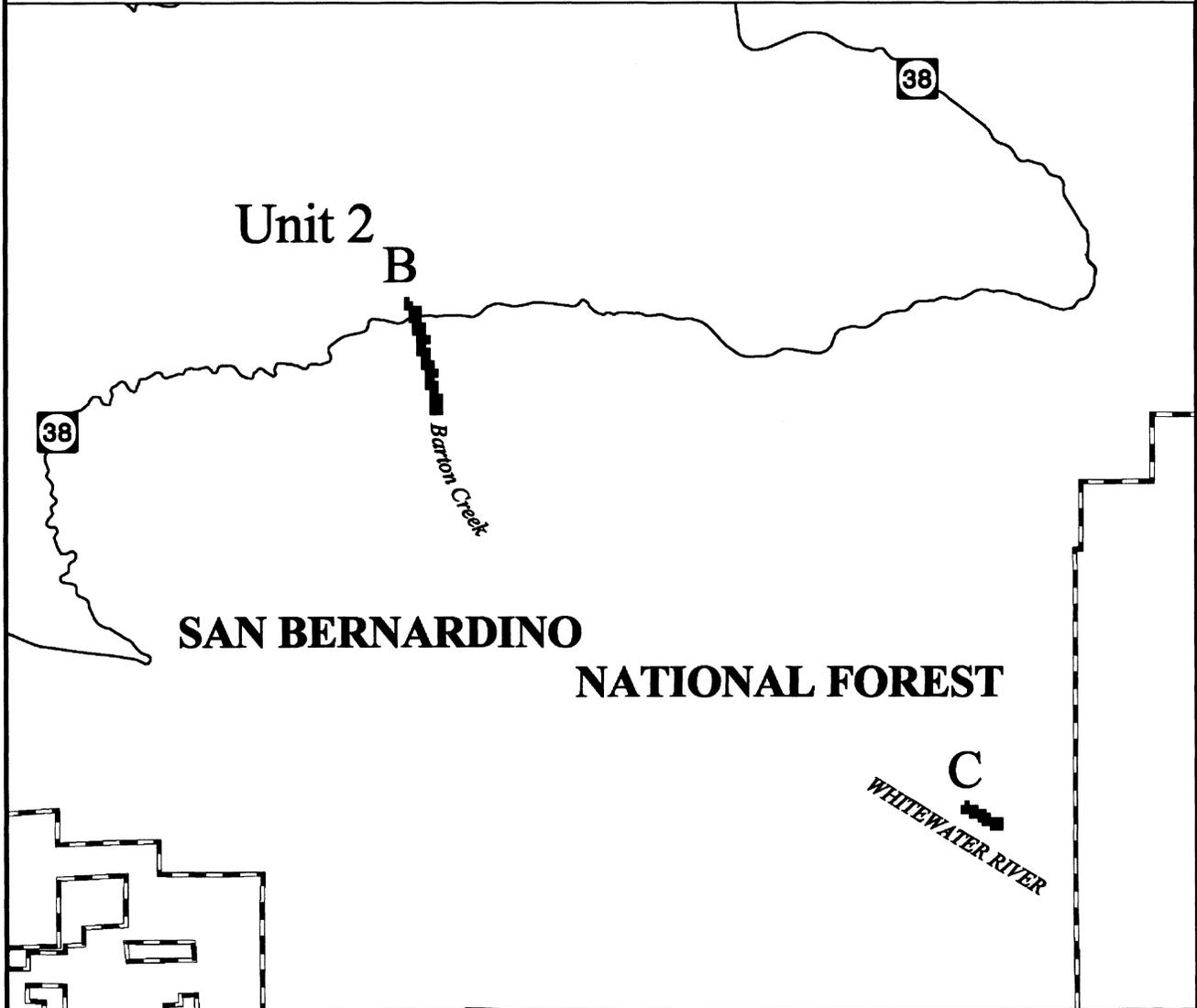
(i) Subunit 2C: Whitewater River (North Fork). Land bounded by the

following UTM NAD27 coordinates (E, N): 523300, 3769200; 523400, 3769200;  
523400, 3769100; 523600, 3769100;  
523600, 3769000; 523800, 3769000;  
523800, 3768900; 523900, 3768900;  
523900, 3768800; 524200, 3768800;  
524200, 3768500; 523900, 3768500;  
523900, 3768600; 523700, 3768600;  
523700, 3768700; 523600, 3768700;  
523600, 3768800; 523400, 3768800;  
523400, 3768900; 523200, 3768900;  
523200, 3769100; 523300, 3769100;  
returning to 523300, 3769200.

(ii) **Note:** Map 5 of subunits 2B and 2C follows:

# Proposed Critical Habitat for Mountain Yellow-legged Frog (*Rana muscosa*)

Unit 2, Subunits B-C, San Bernardino Mountains, San Bernardino County, CA.





3736600; 531600, 3736600; 531600, 3736700; 531700, 3736700; 531700, 3736800; 532000, 3736800; 532000, 3736900; 532100, 3736900; returning to 532100, 3737000.

(ii) Map 6 depicting subunit 3C is found at paragraph (d)(18)(ii) of this section.

(18) Subunit 3D: San Jacinto Mountains (Andreas Creek), San Bernardino National Forest, Riverside County, California.

(i) Subunit 3D: San Jacinto Mountains (Andreas Creek). Land bounded by the following UTM NAD27 coordinates (E, N): 534300, 3735900; 534700, 3735900; 534700, 3735800; 535000, 3735800; 535000, 3735700; 535100, 3735700; 535100, 3735600; 535300, 3735600; 535300, 3735500; 535400, 3735500; 535400, 3735400; 535500, 3735400; 535500, 3735300; 535700, 3735300; 535700, 3735000; 535500, 3735000;

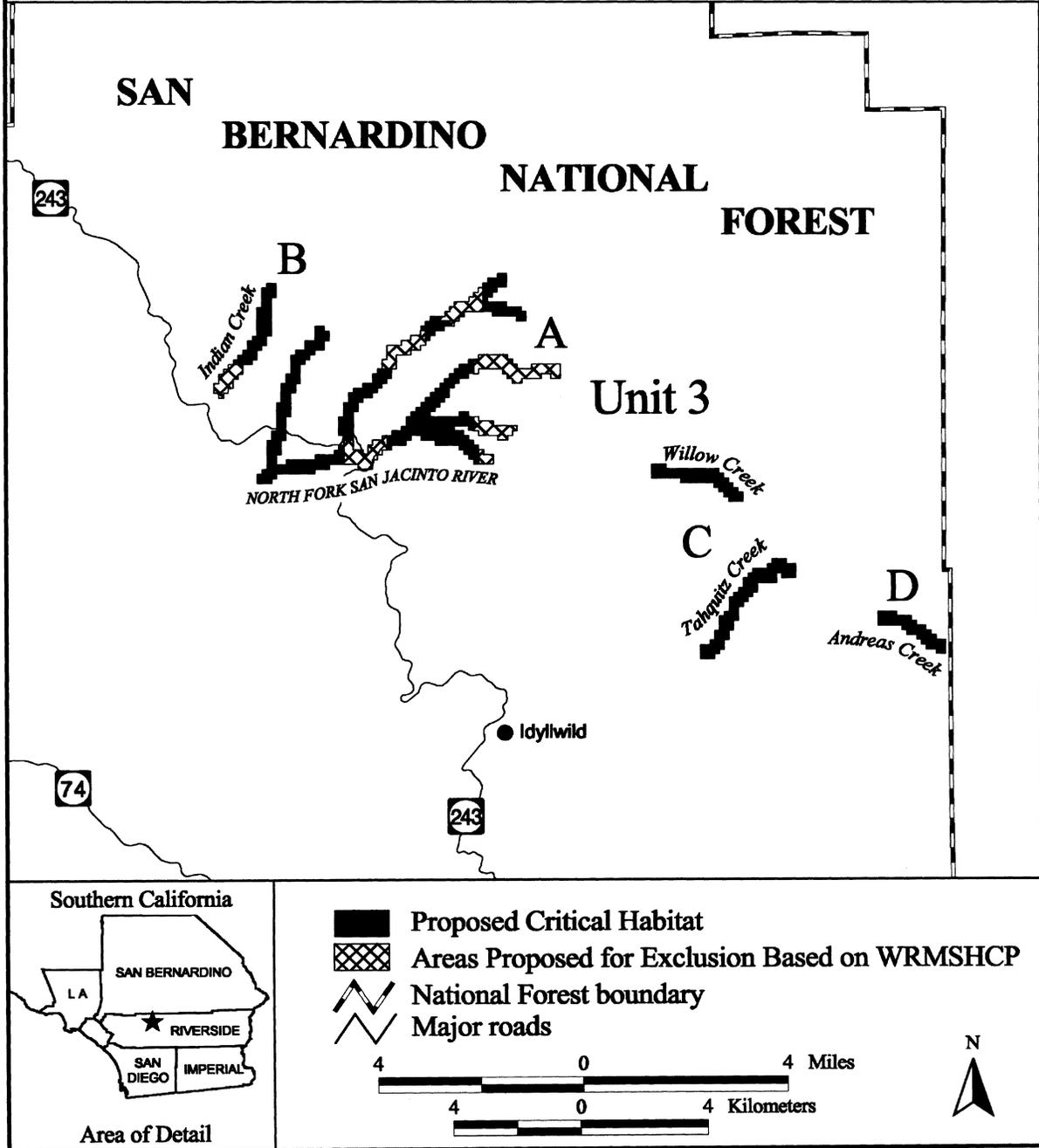
535500, 3735100; 535300, 3735100; 535300, 3735200; 535200, 3735200; 535200, 3735300; 535100, 3735300; 535100, 3735400; 534900, 3735400; 534900, 3735500; 534800, 3735500; 534800, 3735600; 534300, 3735600; returning to 534300, 3735900.

(ii) **Note:** Map 6 of Unit 3, with Subunits 3A, 3B, 3C, and 3D, follows:

**BILLING CODE 4310-55-P**

# Proposed Critical Habitat for Mountain Yellow-legged Frog (*Rana muscosa*)

## Unit 3, Subunits A-D, San Jacinto Mountains, Riverside County, CA.



\* \* \* \* \*

Dated: September 1, 2005.  
 Craig Manson,  
 Assistant Secretary for Fish and Wildlife and  
 Parks.  
 [FR Doc. 05-17755 Filed 9-12-05; 8:45 am]  
 BILLING CODE 4310-55-C