DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU30

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the southern California distinct population segment of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 8,283 acres (ac) (3,352 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located in Los Angeles, San Bernardino, and Riverside Counties, California.

DATES: This rule becomes effective on October 16, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final 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). The final rule, economic analysis, and maps are available via the Internet at *http://www.fws.gov/carlsbad/.*

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

SUPPLEMENTARY INFORMATION:

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

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act (16 U.S.C. 1513 *et seq.*), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2) of the Act. In brief, (1) Designation provides additional protection to habitat only where there is a federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 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, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. We believe that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service.* In that case, the Ninth Circuit 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 considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, 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.

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 limited ability to provide for 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, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled 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) (42 U.S.C. 4321 et seq.). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information on the southern California distinct population segment (DPS) of the mountain yellow-legged frog, hereafter referred to as the mountain yellow-legged frog, refer to the final listing rule published in the **Federal Register** on July 2, 2002 (67 FR 44382) and the proposed critical habitat designation published in the **Federal Register** on September 13, 2005 (70 FR 54106).

Previous Federal Actions

Previous Federal actions for the mountain yellow-legged frog can be found in our proposal to designate critical habitat for the mountain yellow-legged frog published in the **Federal Register** on September 13, 2005 (70 FR 54106). That information is incorporated by reference into this final rule.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the mountain yellow-legged frog in the proposed rule published on September 13, 2005 (70 FR 54106). We also requested written comments from the public on the draft economic analysis (DEA) of the proposed designation in a notice of availability published on July 3, 2006 (71 FR 37881). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the DEA.

During the comment period that opened on September 13, 2005, and closed on November 14, 2005, we received 11 comments directly addressing the proposed critical habitat designation. Of these comments, five were from peer reviewers, two from Federal agencies, and four from organizations or individuals. During the comment period that opened on July 3, 2006, and closed on July 24, 2006, we received no comments directly addressing the proposed critical habitat designation and one comment directly addressing the DEA. Of all comments received during both comment periods, five commenters supported the designation of critical habitat for the mountain yellow-legged frog and two opposed the designation. Five letters included comments or information, but did not express support or opposition to the proposed critical habitat designation. Comments received were grouped into two general issues specifically relating to the proposed critical habitat designation for the mountain yellow-legged frog and are addressed in the following summary and/or incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the mountain yellow-legged frog, and we address them in the following summary.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all five peer reviewers. The peer reviewers generally agreed with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Four of the five reviewers supported the designation and emphasized the importance of including unoccupied areas. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* Several peer reviewers supported our proposed designation. In addition, several of the peer reviewers strongly supported our inclusion of unoccupied areas and encouraged inclusion of additional unoccupied areas due to the small number of sites that support known populations, the presence of suitable habitat in unoccupied sites with historical occurrence records, and the uncertainty in determining streams as unoccupied because of the difficulty in detecting this cryptic species.

Our Response: We appreciate the peer reviewers' comments and concerns for including unoccupied areas. We believe that designating critical habitat in streams not known to be currently occupied, but historically occupied, will assist in the conservation of the mountain yellow-legged frog by identifying possible reintroduction sites or facilitating natural recovery by expansion of very small populations. The peer reviewers did not provide us with site-specific information on other areas that should also be included in the critical habitat designation, and we did not include additional unoccupied habitat in the final designation.

(2) *Comment:* One peer reviewer cited new information from the 2005 mountain yellow-legged frog survey efforts conducted by the United States Geological Survey (USGS). The peer reviewer reported the rediscovery of mountain yellow-legged frog metamorphs in East Fork of City Creek in the San Bernardino Mountains in September of 2005. This rediscovery was surprising since all of the surviving frogs were thought to have been collected and moved to a captive-rearing facility after the 2003 fire and flood events. The peer reviewer also reported the rediscovery of young tadpoles in Dark Canyon in the San Jacinto Mountains in August of 2005 after more than five years of survey efforts that did not detect this species. The peer reviewer also stated that no mountain yellow-legged frogs were detected in Bear Gulch in the San Gabriel Mountains during three survey efforts in 2005, despite this population being one of the two largest remaining populations in southern California as of 2003.

Our Response: The recent rediscovery of mountain yellow-legged frogs in City Creek and in Dark Canyon highlights the difficulty in detecting this species and highlights the uncertainty in determining whether a stream is truly unoccupied by mountain yellow-legged frogs after negative survey efforts, especially when these streams were recently known to be occupied. For this reason, we are still considering Bear Gulch as occupied for this final designation. City Creek and Dark Canyon were already considered occupied in the proposed rule, and therefore there is no change in their occupancy status for the final rule.

(3) *Comment:* One peer reviewer reported that chytrid fungal disease was discovered in wild frogs that were recently rediscovered in the East Fork of City Creek in September 2005 and in the captive frogs taken from the same creek in 2004, thus changing our perception of the areas that are known to contain this

disease. The peer reviewer stated that it was unusual to find living frogs infected with chytrid because it generally kills infected frogs. The peer reviewer also stated that this discovery is in contrast to our statement in the proposed rule that chytrid fungal disease does not seem to be plaguing remaining mountain yellow-legged frog populations in southern California.

Another peer reviewer stated that chytrid fungus does not seem to be a major issue concerning current frog populations because it presumably already caused an unknown, massive die-off of frog populations across southern California during the late 1960s and 1970s, resulting in small remnant populations that currently exist. However, it may still be eliminating frogs at some specific locations, such as the North Fork of the San Jacinto River below Mt. San Jacinto State Park.

Our Response: At the time of writing the proposed rule, we were unaware that chytrid fungus was detected in mountain yellow-legged frogs in southern California. We do not have enough information at this time to determine the magnitude of impacts that chytrid has had or will have on frog populations in southern California. Nonetheless, because there is no information demonstrating the relationship between habitat features or quality and chytrid fungus, the information provided by the peer reviewer does not change the critical habitat designation.

(4) *Comment:* One peer reviewer stated the critical habitat designation should include aquatic refugia as a primary constituent element (PCE) since we discuss it in the Primary Constituent Elements section under ''Cover or Shelter.''

Our Response: We agree with the peer reviewer and have included aquatic refugia as a condition of PCE 1, which includes pools with bank overhangs, downfall logs or branches, and/or rocks, because it provides cover from predators. For more information, please see the Primary Constituent Elements section below.

(5) *Comment:* One peer reviewer stated the critical habitat designation should provide more discussion on the role of canopy cover and habitat suitability and that there is a delicate and unknown balance between canopy cover and suitability of high-elevation habitat. In the San Jacinto Mountains, the canopy has become so extensive that it threatens the existence of the mountain yellow-legged frog. It is critical that suitable habitat be protected and it may be necessary to manipulate the canopy to open up the habitat.

Our Response: In general, information on the effects of canopy cover on habitat suitability is limited. Our discussion on canopy cover in the Primary Constituent Elements section below was based only on data values reported from a USGS report on mountain yellow-legged frog populations in southern California (Backlin *et al.* 2004). We agree with the reviewer that canopy cover may affect habitat suitability and have discussed this in our Special Management section below by stating that it may be necessary in some of the critical habitat units to reduce canopy cover to make habitat more suitable for this species. However, without more specific information, we are unable to address this issue more thoroughly in this critical habitat designation.

(6) *Comment:* One peer reviewer approved of our use and application of upland frog movement data from Sierra Nevada populations to southern California populations because it is difficult to obtain upland habitat use information from mountain yellow-legged frog populations in southern California. Therefore, the interpretations made in the proposed rule to designate critical habitat are reasonable.

Our Response: We appreciate the concurrence with our methods for determining the criteria used to identify critical habitat. For more information, please see the Criteria Used To Identify Critical Habitat section below.

(7) *Comment:* Two peer reviewers questioned the methods used to calculate stream-width and length for ''occupied'' habitat. One of the reviewers questioned the movement distance (4,905 feet (ft) (1,495 meters (m)) that the Service used in the proposed critical habitat rule to estimate the length of occupied stream if there is suitable habitat that extends beyond this distance. The other reviewer questioned why the Service discounted the possibility that the maximum distance moved was crucial to the mountain yellow-legged frog's survival and questioned whether there were enough downstream habitats to provide for refugia during droughts and for connectivity between streams. The reviewer suggested redefining areas containing essential features to capture 11,745 ft (3,580 m) upstream and downstream from occurrence locations based on data from other studies, as well as 1,378 ft (420 m) from the centerline of streams for upland movements. The reviewer also questioned whether there had been efforts made to quantify frog habitat use and movement during specific breeding, feeding, and overwintering periods, including off-stream habitats.

Our Response: In general, information on mountain yellow-legged frog movements in southern California is extremely limited. Our discussion on mountain yellow-legged frog movements was based on the maximum distance moved by an individual mountain yellow-legged frog in the San Bernardino Mountains in southern California (Backlin *et al.* 2004). We did not include the larger dataset on frog movements in the Sierra Nevada mountains because of the different habitat characteristics associated with mountain yellow-legged frogs in the Sierra Nevada (*e.g.*, lakes and higher elevation). However, we relied on data from the Sierra Nevada mountains to determine the width of riparian and upland habitats occupied by mountain yellow-legged frogs, because we did not have any such data from southern Californian mountain yellow-legged frogs. Although we recognize that suitable habitat may extend beyond the distances we used to determine critical habitat, we did not receive better information on a more appropriate distance measure to use for southern California mountain yellow-legged frogs. Finally, we are also unaware of any efforts to quantify mountain yellow-legged frog habitat use and movement during specific breeding, feeding, and overwintering periods, including off-stream habitats in southern California. For more information, please see the Criteria Used To Identify Critical Habitat section below.

(8) *Comment:* One peer reviewer stated the proposed rule did not contain discussion on how the Service determined how much unoccupied habitat was essential for the conservation of the species. The peer reviewer suggested that more unoccupied areas may be essential for the conservation of the species.

Our Response: We believe that we did provide a thorough discussion regarding the criteria that were used for identifying unoccupied streams in the proposed critical habitat rule published on September 13, 2005 (70 FR 54106). Furthermore, we did not receive additional information that identified specific unoccupied areas, and rationale for those areas, that should be considered as critical habitat during the comment period for the proposed rule. For more information, please see the Criteria Used To Identify Critical Habitat section below.

(9) *Comment:* Two peer reviewers questioned our use of a 1 to 4 year range for tadpole growth. One reviewer commented that since this was based on

Sierra Nevada mountain yellow-legged frog populations, southern California frog populations living at much lower elevation would likely not require up to 4 years. The other reviewer stated that tadpole growth phase appeared to be around 2 years for southern California populations based on their experience.

Our Response: At the time of writing the proposed rule, the best information available on tadpole growth was from Sierra Nevada mountain yellow-legged frog populations. We agree with the reviewer that this may have been an overestimate of the time it can take for tadpole growth. Based on peer reviewer comments, we have revised the discussion of the amount of time for tadpole growth by citing a period 1–2 years instead of up to 4 years (see section below titled Primary Constituent Elements for the Mountain Yellow-Legged Frog).

(10) *Comment:* One peer reviewer questioned whether the values used for dissolved oxygen as a PCE were too narrow in range.

Our Response: After reevaluating our interpretation of the available dissolved oxygen data, we agree with the reviewer that the dissolved oxygen values used as a PCE in the proposed rule may have represented too narrow a range to accurately describe habitat suitability for the mountain yellow-legged frog. We also believe that information on other water quality factors (water chemistry and temperature) were insufficient to accurately describe the complete range of values that may be necessary to maintain suitable habitat for mountain yellow-legged frogs. As a result, we have removed water quality as a PCE from the final critical habitat rule.

(11) *Comment:* One peer reviewer stated the PCEs should also include intermittent stream reaches and tributaries to permanent streams because they are also used by mountain yellow-legged frogs.

Our Response: Our process for capturing upland areas as critical habitat does include some parts of intermittent stream reaches and tributaries to the main stream reach identified as critical habitat. The peer reviewer did not provide substantial information indicating the significance of intermittent stream reaches to mountain yellow-legged frogs. Therefore, we are unable to quantify the importance of this habitat type and have not expanded the boundaries of critical habitat to include additional intermittent stream reaches and tributaries to permanent streams. For more information on how we designated critical habitat, please see the Criteria Used To Identify Critical Habitat section below.

(12) *Comment:* One peer reviewer questioned whether there is any basis for using 3.1 miles (mi) (5 kilometers (km)) from nearby occupied streams as a criterion for choosing unoccupied sites.

Our Response: In general, information on mountain yellow-legged frog dispersal movements in southern California is extremely limited. Our discussion on mountain yellow-legged frog movements was based on the best available data from a dispersal study in the Sierra Nevada Mountains, California (Knapp in litt. 2005). In this study, frogs were reported to disperse several kilometers and recolonize lakes following trout removal. Frogs were reported to move several kilometers along streams and across dry land. The data from this study were used to develop a dispersal function that was included in a population viability analysis. The analysis used a dispersal function of 2.5 mi (4 km) and consistently produced frog distributions similar to those actually found in the field. We recognize that the environment in the Sierra Nevada mountains is different from the frog habitat in the southern California mountains. However, since this is the best information available for this species on dispersal behavior, we used it as one of the criteria for selecting unoccupied critical habitat areas. In the proposed rule, we erroneously cited a dispersal distance of 3.1 mi (5 km). The distance has been changed to 2.5 mi (4 km) in this final critical habitat rule (see section titled Stream Reaches Not Currently Known to Be Occupied for a more detailed discussion).

(13) *Comment:* One peer reviewer questioned why the proposed rule did not include trout predation, one of the largest threats to frog populations, in the Special Management Considerations section and whether there are efforts to remove non-native trout from occupied mountain yellow-legged frog habitat.

Our Response: We included threats that may require special management considerations and that have an effect on primary constituent elements. The threat of trout predation has the potential to affect the survival of mountain yellow-legged frogs but does not affect habitat features. We recognize that non-native trout predation is a major threat to the recovery of the mountain yellow-legged frog and encourage programs to remove introduced trout from streams where frog recovery is designated. The critical habitat rule does not authorize management actions; however, we strongly encourage trout removal for adequate frog conservation. We discussed one previous trout removal action in subunit 1C (Little Rock Creek) in the Unit Descriptions section.

(14) *Comment:* One peer reviewer questioned whether Riverside County can actually purchase and conserve all 141 ac of private land that was excluded from critical habitat based on the lands inclusion within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) as stated in the proposed critical habitat rule.

Our Response: No areas containing features essential to the conservation of the mountain yellow-legged frog are within lands (Additional Reserve Lands) that are to be purchased and conserved by Riverside County under their Western Riverside County MSHCP. We mistakenly presented this in the proposed critical habitat rule (70 FR 54106) in our discussion regarding the exclusion of non-Federal lands that are covered under the MSHCP. We are still excluding these lands because of conservation measures provided for the mountain yellow-legged frog from the MSHCP's Additional Survey Needs and Procedures policy (see Relationship of Critical Habitat to Approved Habitat Conservation Plans section for a more detailed discussion).

(15) *Comment:* One peer reviewer stated the two-striped garter snake (*Thamnophis hammondii*) and raccoons (*Procyon lotor*) should be included as potential predators in the Primary Constituent Elements section within the discussion on Cover or Shelter.

Our Response: A broad range of terrestrial taxa have been observed as predators of mountain yellow-legged frogs, including several species of birds, snakes, and mammals (Jennings *et al.* 1992; Mathews *et al.* 2002; Mullally and Cunningham 1956). We have added the two predators mentioned by the peer reviewer to the list of potential predators from which mountain yellow-legged frogs would try to seek cover (see Primary Constituent Elements section within the discussion on Cover or Shelter for a more detailed discussion).

(16) *Comment:* One peer reviewer stated that the critical habitat rule should include bedrock just underneath the surface of the water as another type of sunning post as a primary constituent element.

Our Response: We appreciate the clarification on sunning post features and have added bedrock just underneath the surface of the water as another important potential type of sunning post that mountain yellow-legged frogs may utilize to our description of PCE 1. For more

information, please see the Primary Constituent Elements section below.

(17) *Comment:* One peer reviewer questioned whether enforcement activities by the Service were a part of the Western Riverside County MSHCP, and if so, then the justification for not including non-Federal lands within the MSHCP is justified. If not, then the peer reviewer questioned whether the level of protection under the MSHCP is consistent with that of the critical habitat proposal.

Our Response: The Service issued a single incidental take permit pursuant to section 10(a)(1)(B) of the Act as well as entered into an Implementing Agreement with the 22 Permittees of the MSHCP. The Service is responsible for overseeing the Permittees' compliance with the permit and Implementing Agreement. When implemented, we expect the MSHCP will provide substantial protection of the PCEs and special management of essential habitat features for the mountain yellow-legged frog on MSHCP conservation lands. This level of management for the mountain yellow-legged frog on private lands by the MSHCP is greater than a critical habitat designation (see section titled Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)—Exclusion Under Section 4(b)(2) of the Act for a more detailed discussion). Therefore, we agree with the commenter that excluding non-Federal lands within the MSHCP from the critical habitat designation is justified.

(18) *Comment:* One peer reviewer stated the critical habitat rule should include fire control activities as a Federal activity that may adversely affect critical habitat because of threats of water removal from streams, dropping fire retardant on streams or frogs, disease and exotic predator transport from clothing or footwear of fire fighters and water drops, respectively.

Our Response: We have included fire control activities under Federal activities that may adversely affect critical habitat. For more information, please see the Effects of Critical Habitat Designation section below.

General Comments

Comments Related to Procedural and Legal Compliance

(19) *Comment:* One commenter stated that critical habitat should not be designated within the Western Riverside County MSHCP plan area because the mountain yellow-legged frog is one of the listed species covered under the MSHCP. The plan was approved by the County of Riverside and 14 cities, and issued a Section 10(a) permit by the Service in 2004.

Our Response: We agree with the commenter and have excluded from critical habitat all non-Federal lands containing features essential to the conservation of the mountain yellow-legged frog within the MSHCP Plan Area. However, we are designating Federal lands managed by the United States Forest Service (USFS) within the MSHCP Plan Area as critical habitat because they are not a permittee under the section 10(a)(1)(B) permit for the MSHCP. For more information, please see Exclusion Under Section 4(b)(2) of the Act section below.

(20) *Comment:* One commenter stated that critical habitat should not be designated on Federal lands in the Angeles and San Bernardino National Forest because designating critical habitat for species already on the endangered species list provides little added conservation benefit to the species. This commenter also stated the U.S. Army Corps of Engineers' (Corps) current involvement in an ecological restoration project in the San Bernardino Mountains has the potential to be within the downstream portions of watersheds in which critical habitat is proposed for the mountain yellow-legged frog, although none of the critical habitat areas is actually within the Corps' study boundary.

Our Response: We are obligated under the Act to designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of designating an area as critical habitat. The Secretary may exclude an area if the benefits of exclusion outweigh the benefits of inclusion unless the Secretary determines that such exclusion will result in the extinction of the species.

We examined the USFS's Revised Land and Resource Management Plans for the Four Southern California Forests, California (Forest Plan) that was approved in September 2005 and the Service's biological opinion that was issued on the Forest Plan on September 15, 2005. At issue were the effects of the Forest Plan and ongoing activities on USFS lands on federally-listed species, including the mountain yellow-legged frog. The goal of the Forest Plan is to describe a strategic direction for the management of the national forests over the next 10 to 15 years. The Forest Plan does not make any decisions regarding USFS site-specific project proposals for implementing the land management plans nor do they compel managers to implement any specific conservation activities. The Forest Plan also divides the national forests into several ''Land Use Zones'', including Developed Area Interface, Back Country, Back Country Motorized Use Restricted, Back Country Non-Motorized, Critical Biological, Recommended Wilderness, Existing Wilderness, and Experimental Forest. The land use zones were designed to describe the type of anticipated and allowable public use or administrative activities.

During the proposed critical habitat rulemaking process, we coordinated with staff from both the Angeles and San Bernardino National Forests to seek their input on the best areas to designate critical habitat on their lands that will contribute to the recovery of the mountain yellow-legged frog. Due to the amount of unoccupied critical habitat areas and the precarious status of existing populations, we determined that the benefit of including USFS lands as critical habitat are significant because this will help maintain the Service's role in reviewing potential future impacts to areas that are important for the survival and recovery of mountain yellow-legged frog populations. Our decision to designate critical habitat on USFS lands was supported in a public comment letter from the Angeles National Forest regarding critical habitat on their lands. We do not have information indicating that the benefits of excluding Federal lands within the National Forests will outweigh the benefits of including these lands.

As for the Corps' ecological restoration project, we are not aware of the specifics of this project. Federal projects that may affect critical habitat require consultation with the Service. However, we would hope that an ecological restoration project would provide long-term benefits to the mountain yellow-legged frog and its habitat.

(21) *Comment:* One commenter stated that they did not support USFS management practices that may be detrimental to the mountain yellow-legged frog, such as pesticide use, vegetation removal agents, and prescribed burning.

Our Response: We appreciate the commenter's concerns regarding threats to the mountain yellow-legged frog. These threats are addressed in the Special Management Considerations section as well as in the Effects of Critical Habitat Designation sections below.

(22) *Comment:* One commenter stated that they are opposed to the overzealous land grabbing by the County of

Riverside for the protection of the mountain yellow-legged frog.

Our Response: This issue is beyond the scope of this critical habitat rule. The designation of critical habitat does not dictate decisions regarding land acquisition, use, or management practices.

Comments Related to the Draft Economic Analysis (DEA)

(23) *Comment:* One commenter stated that attributing costs associated with protection measures for the mountain yellow-legged frog (*i.e.,* loss of recreation, fishing, hiking, camping, and rock climbing) on USFS lands was wrong and misleading because these would have been done for the conservation of the species, not necessarily because of critical habitat designation. For example, the North Fork of the San Jacinto River and City Creek on the San Bernardino National Forest was already closed to public recreation use in the stream prior to this critical habitat designation.

Our Response: We recognize that the USFS has already been conducting conservation measures for the mountain yellow-legged frog prior to this designation. The DEA identifies those economic activities believed to most likely threaten the listed species and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, the analysis in the DEA considers all future conservation-related impacts to be co-extensive with the designation. Inclusion of co-extensive impacts in the DEA complies with instruction by the United States Court of Appeals in 2001 for the Service to conduct a full analysis of all of the economic impacts or the proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (New Mexico Cattle Growers Association v. United States Fish and Wildlife Service, 248 F.3d 1277 (10th Cir. 2001)).

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the mountain-yellow-legged frog, we reviewed and considered comments from the public and peer reviewers on the proposed designation of critical habitat published on September 13, 2005 (70 FR 54106) and public comments on the draft economic analysis published on July 3, 2006 (71 FR 37881). As a result of comments received on the proposed rule and the DEA, and a reevaluation of the proposed critical habitat boundaries, we made changes to our proposed designation, as follows:

(1) We added an additional feature (rocks just beneath the surface of the water for sunning posts) to PCE 1 based on one peer reviewer's comment.

(2) We added aquatic refugia as another feature to PCE 1 based on two peer reviewer comments.

(3) After a reevaluation of the existing information on water quality (*i.e.,* pH, dissolved oxygen, and water temperature) and comment from a peer reviewer on our use of a narrow range of water quality parameters to describe water quality as a PCE, we determined that there was insufficient information on water quality to provide an accurate range of water quality values that describes suitable frog habitat. Therefore, we removed water quality as a PCE (see Comment #10 above for a more detailed discussion).

(4) We changed our determination of the occupancy status of Day Canyon, East Fork of Barton Creek, and Indian Creek at Hall Canyon from currently occupied to currently unoccupied and not occupied at the time of listing based on a reevaluation of existing information and discussions with biologists that have surveyed these sites. Mountain yellow-legged frogs have not been detected in any of these streams since the mid-1990s, but not all the stream reaches in Day Canyon and Indian Creek at Hall Canyon have been surveyed. Without recent documentation that these streams are known to be occupied, we believe this change appropriately reflects the species' current status.

(5) We corrected the dispersal distance used in the section titled Criteria Used to Identify Critical Habitat from 3.1 mi (5 km) to 2.5 mi (4 km). This information is based on the best available data on mountain yellow-legged frog movements from a dispersal study conducted in the Sierra Nevada Mountains, California (Knapp *in litt.* 2005) (see Comment #12 above for a more detailed discussion).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) Essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

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 may affect 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. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species 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 data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, 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 thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act). In areas outside the geographical

area occupied by the species at the time of listing, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat within those areas. An area currently occupied by the species but not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically be included in the critical habitat designation.

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 (P.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 data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package 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 (P.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. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

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

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific data available to determine areas that contain the 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), proposed critical habitat rule (70 FR 54106), site visits, soil and species map coverages, and data compiled in the California Natural Diversity Database (CNDDB). We also reviewed available information regarding the ecology, natural history, and habitat requirements of the 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 USGS and the USFS, and regional GIS coverages.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, 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; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distributions of a species.

The specific primary constituent elements required for the mountain yellow-legged frog are derived from the biological needs of the mountain yellow-legged frog as described below and in the proposed critical habitat designation published in the **Federal Register** on September 13, 2005 (70 FR 54106).

Space for Individual and Population Growth and Normal Behavior

Mountain yellow-legged frogs are a highly aquatic, cryptic, diurnal species that occupy mountain streams which have cool waters and originate from springs and snowmelt (Jennings and Hayes 1994a, b). Mountain yellow-legged frogs are most often found in creeks with permanent water in at least some portion of the reach. Mountain yellow-legged frogs also utilize streams, rivers, perennial creeks, permanent plunge pools within intermittent creeks and pools, and their associated riparian and upland habitat (Mullally 1959, Backlin *et al.* 2004). Backlin *et al.* (2004) reported creeks with occupied mountain yellow-legged frog populations were generally narrow, averaging from 3 to 10 ft (1 to 3 m) wide, with associated riparian zone widths ranging from 26 to 82 ft (8 to 25 m), with canyon walls typically rising steeply on either side. They also reported stream reach lengths containing mountain yellow-legged frog populations varied from approximately 820 ft (250 m) in Dark Canyon, to greater than 16,404 ft (5,000 m) in East Fork, City Creek. Backlin *et al.* (2004) also reported that pools were typically 3 to 32 ft (1 to 10 m) long, 2 to 23 ft (0.5 to 7 m) wide, 0.4 to 180 inches (in) (1 to 180 cm) deep, and typically had some type of structure in the form bank overhangs, downfall sticks, and/or rocks that could function as refugia, but there was minimal aquatic vegetation. Mountain yellow-legged frogs have been noted to inhabit creeks varying in type from high gradient with rocky courses to low gradient with marshy margins and sod banks (Mullally 1959). Creeks such as those with permanent water sources and their associated riparian and upland habitat (PCE 1) provide breeding sites, foraging grounds, and shelter for individual and population growth and normal behavior. They also provide for perennial flows needed for egg-laying and tadpole growth and survival.

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

Mountain yellow-legged frogs appear to be principally insectivorous, feeding on a wide variety of invertebrates, including beetles (*Coleoptera*), ants

(*Formididae*), bees (*Apoidea*), wasps (*Hymenoptera*), flies (*Diptera*), true bugs (*Hemiptera*), and dragonflies (*Odonata*) (Long 1970). Terrestrial insects and adult stages of aquatic insects may be the preferred food for adult mountain yellow-legged frogs (Bradford 1983); larger frogs consume more aquatic true bugs likely because of their more aquatic behavior (Jennings and Hays 1994a). Some predation of tadpoles by adult mountain yellow-legged frogs appears possible as evidenced in Sierra Nevada populations (Mathews and Pope 1999).

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 (Zeiner *et al.* 1988). An open or semi-open canopy of riparian vegetation (canopy overstory not exceeding 85 percent, Backlin *et al.* 2004) 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*), two-striped garter snake, Brewer's blackbird (*Euphagus cyanocephalus*), Clark's nutcrackers (*Nucifraga columbiana*), raccoons, and coyotes (*Canis latrans*) (Jennings *et al.* 1992; Jennings *in litt.* 2005; Mathews *et al.* 2002; Mullally and Cunningham 1956; 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). White alders (*Alnus rhombifolia*), willows, sycamore, cottonwoods, conifers, and maples dominate the mountain yellow-legged frog's non-aquatic habitat (Jennings and Hayes 1994b; Backlin *et al.* 2004). Open gravel banks and rocks projecting above or just underneath the surface of the water may provide sunning posts (Zweifel 1955; Jennings *in litt.* 2005). Many of the streams in which mountain yellow-legged frogs 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 (Vredenburg *et al.* 2005). Individuals may, however, aestivate during especially dry periods of late summer (Mullally 1959). In southern California, mountain yellow-legged frogs historically ranged from 1,214 to 7,546 ft (370 to 2,300 m) in elevation (Jennings and Hayes 1994a, 1994b).

Primary Constituent Elements for the Mountain Yellow-Legged Frog

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of the mountain yellow-legged frog. Areas designated as critical habitat for the mountain yellow-legged frog contain both occupied and unoccupied streams and riparian areas within the species' historical geographic range, and contain sufficient PCEs to support at least one life history function. In identifying PCEs, we used the best available scientific data available. 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 mountain yellow-legged frog in the occupied areas designated as critical habitat. In order to conserve this species, we believe it is necessary to designate critical habitat in areas currently unoccupied by the species. For more information, please see the Criteria Used to Identify Critical Habitat and Unit Descriptions sections below for further discussion of unoccupied habitat.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the mountain yellow-legged frog's PCEs are:

(1) Water source(s) found between 1,214 to 7,546 feet (370 to 2,300 meter) in elevation that are permanent. 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 last for up to 2 years. 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 includes:

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

b. Open gravel banks and rocks projecting above or just beneath the surface of the water for sunning posts;

c. Aquatic refugia, including pools with bank overhangs, downfall logs or branches, and/or rocks to provide cover from predators; and

d. Streams or stream reaches between known occupied sites that can function as corridors 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 meters) 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 provide basking areas for the species.

This designation is designed for the conservation of PCEs necessary to support the life history functions of the mountain yellow-legged frog. Because not all life history functions require all the PCEs, not all areas designated as critical habitat will contain all the PCEs.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the mountain yellow-legged frog. In some cases, the PCEs exist as a result of ongoing Federal actions. As a result, ongoing Federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

Criteria Used To Identify Critical Habitat

We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 2002, as well as some specific unoccupied areas outside the geographical area occupied by the species at the time of listing, but were historically occupied, because we have determined that such areas are essential for the conservation of the species.

Stream Reaches Occupied at the Time of Listing

We have defined occupied critical habitat as: (a) Those streams known to

be occupied by the mountain yellow-legged frog at the time of listing in 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 these values). We used information from the proposed and final listing rules, reports prepared by the USGS, the USFS, the California Department of Fish and Game (CDFG), the CNDDB, researchers, and consultants to identify the specific locations occupied by the southern California mountain yellow-legged frog at the time of listing. All occurrence records dating from 2002 of mountain yellow-legged frogs were plotted on maps in GIS as points and polygons.

The currently occupied habitat for the mountain yellow-legged frog is highly limited and isolated. Population estimates are all extremely low, 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). The mountain yellow-legged frog is at a high risk of extinction and is highly susceptible to stochastic events (Backlin *et al.* 2004). We have determined that all occupied areas contain features essential to the conservation of the species and are either designated as critical habitat or are excluded from designation pursuant to section 4(b)(2) of the Act.

Stream Reaches Unoccupied at the Time of Listing

The streams not known to be currently occupied that are being designated as critical habitat were all historically occupied, and the designation of these areas as critical habitat will decrease the degree of fragmentation within the current geographic distribution of the mountain yellow-legged frog. We believe that the designation of these additional areas not known to be currently occupied by the mountain yellow-legged frog is essential for the conservation of the species because:

(1) The current, overall population size of the mountain yellow-legged frog is extremely small, and it must increase in order to insure long-term survival of this species in southern California (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. Such population augmentation in 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;

(2) 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 the existence of the mountain yellow-legged frog in southern California as a whole (*i.e.*, increase the likelihood of persistence at the local population level and of this DPS range-wide);

(3) 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 (*i.e.*, increase connectivity between streams that are known to be currently occupied);

(4) Additional subunits are designated as critical habitat 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 of the unoccupied subunits lie within 0.9 to 2.5 mi (1.5 to 4 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;

(5) 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 additional subunits may be faced with fewer and more-easily treated threats than the occupied units.

Width of Riparian and Upland Habitats Along Occupied Stream Reaches

Once we determined which stream reaches were occupied, we focused on delineating those riparian and upland habitats used by the 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. 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). We used this data to calculate a weighted mean of 259 ft (79 m) of overland distance traveled by mountain yellow-legged frogs. Subsequently, we applied the weighted mean of overland distance (rounded up to 262 ft (80 m)) to delineate the amount of riparian area and upland habitat that is occupied by frogs and essential to their conservation. Although this study took place in the Sierra Nevada mountains in different types of aquatic habitat (*e.g.*, lakes), it represents the best movement data available on mountain yellow-legged frogs and some indication of this species' physical capabilities to move away from aquatic habitats.

We also compared the results of the Pope and Mathews (2001) study with 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 three frogs in 2003 and six frogs in 2004. In comparison to Knapp's study, the 262 ft (80 m) width appears to be a conservative estimate of the riparian and upland habitats occupied by the mountain yellow-legged frog. We did not use results from the Knapp study because we had a more complete dataset from the Pope and Mathews study and the findings from the Knapp study are still preliminary.

Length of Occupied Stream Reaches

The next step was to focus on delineating the length of up- and downstream reaches from known occupied areas to determine the length of stream reaches that are used by the mountain yellow-legged frog. We estimated the length of up- and downstream occupied reaches from our

review of several studies on mountain yellow-legged frog movements (Pope and Matthews 2001; Knapp *in litt.* 2005; Backlin *et al.* 2004; Dr. V. Vredenburg, University of California-Berkeley, pers. comm. 2006). Since there are no definitive published studies on instream movements of mountain yellow-legged frogs, we used portions of the above-mentioned studies that specifically identified stream movement. In their study of movement ecology of mountain yellow-legged frogs in the Sierra Nevada Mountains, Pope and Matthews (2001) reported a tagged female mountain yellow-legged frog that traveled a minimum of 1,968 ft (600 m) in a fast-flowing stream. For streams in southern California, Backlin *et al.* (2004) reported movement distances between approximately 131 ft (40 m) to 4,902 ft (1,494 m). In the Sierra Nevada Mountains, Knapp (*in litt.* 2005) reported movements along a stream connecting two lakes, 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 an approximately 11,811 ft (3,580 m) movement of three frogs in 2003, and one frog in 2004, between two lakes that included both dispersal along a stream and overland movement. Finally, Dr. V. Vredenburg (University of California-Berkeley, pers. comm. 2006) stated that mountain yellow-legged frog tadpoles have been located approximately 5,905 ft (1,800 m) downstream from where they were tagged in the Sierra Nevada Mountains.

The variability of study designs and sample sizes in mountain yellow-legged frog studies in the Sierra Nevada Mountains have made it difficult to infer their results to understand habitat requirements and movement distances of mountain yellow-legged frog populations in southern California mountains. Instead, we have determined that using the recorded movement distance of 4,902 ft (1,494 m) in City Creek, East Fork, in the San Bernardino Mountains in southern California, is a more appropriate movement distance to measure the length of a stream that is occupied by mountain yellow-legged frogs from a known occurrence. 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 movement distance connects known occurrences along a stream or in populations to those that occur in tributaries; (2) this movement 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 distance for stream and overland movements identified by Knapp (*in litt.* 2005) for adults and by Vredenburg (pers. comm. 2006) for tadpoles in the Sierra Nevada mountains, and thus likely represents a conservative estimate of the upstream and downstream movements by the mountain yellow-legged frog in southern California.

Stream Reaches Not Currently Known To Be Occupied

We are also designating critical habitat on lands that were historically occupied by the mountain yellow-legged frog, but are not known to be currently occupied. These stream reaches were all historically occupied within the past 50 years and still contain features essential to the conservation of the species. We selected these sites based in part on comments and information provided to us by herpetologists and experts on the mountain yellow-legged frog. Biologists from management agencies (USGS, CDFG, USFS) also provided their knowledge of anthropogenic activity level, current habitat suitability for the species (including survey data), and management potential. Based on the best available information, we have determined that without the management and protection of these areas that are not known to be occupied, conservation of the species will not be possible in the foreseeable future.

We used the following criteria to select areas historically occupied, but not known to be currently occupied by the mountain yellow-legged frog, for inclusion in critical habitat. All of the areas designated as critical habitat that are currently not known to be occupied contain one or more of the following criteria:

(1) Streams where the habitat contains sufficient PCEs (*e.g.*, characteristics such as perennial water flow, pools, riffles, runs, riparian and upland habitat, banks with rocky substrate) to support life history functions;

(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, 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 the mountain yellow-legged frog because: (a) No conclusive evidence exists indicating that the species is currently completely absent from a site due to few, incomplete, or absence of surveys having been conducted there recently, (b) there is a lack of major anthropogenic disturbance, or (c) they were known to be occupied within the past 15 years, which is the approximate life span of a mountain yellow-legged frog (Matthews and Miaud 2005);

(5) Streams that are in remote locations, which are geographically distant from areas with heavy anthropogenic activities, such as vehicular traffic, human recreation, dredging, trout stocking, water regulation, and other sources of pollution;

(6) Streams that are not currently stocked with nonnative fish;

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

(8) Streams where there is potential for re-occupation by the species, either by natural means through dispersal from currently occupied sites, which are located within 2.5 mi (4 km) of a currently occupied site (Knapp *in litt.* 2005), or by future re-introduction efforts.

When determining critical habitat boundaries, we made every effort to avoid developed areas such as buildings, paved areas, and other structures that lack PCEs for the mountain yellow-legged frog. The scale of the maps prepared under the parameters for publication within the *Code of Federal Regulations* may not reflect the removal of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been removed by text in the final rule and are not designated as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7

consultation, unless they affect the species and/or adjacent critical habitat.

Units are designated based on sufficient PCEs being present to support one or more of the mountain yellow-legged frog's life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the frog's particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We have excluded non-Federal public lands and private lands that are covered under the Western Riverside County MSHCP (see Exclusion Under Section 4(b)(2) of the Act section for a detailed discussion).

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the primary constituent elements, within the areas determined to be occupied at the time of listing, may require special management considerations or protection. Threats to those features that define the primary constituent elements for the mountain yellow-legged frog include the direct and indirect impacts of some human recreation activities, watershed management practices, water diversions from streams, fire management practices, and hazardous materials spills along roadways adjacent to streams.

Subunits 1A, 1B, 1C, 1D, 2A, and 3A may require special management due to threats posed by recreational activities, including camping, hiking, fishing, and recreational mining (USFS 2002). In areas occupied by mountain yellow-legged frogs, human use in and along streams can disrupt eggs, larvae, and adult frogs (Jennings 1995), change the character of the stream (*e.g.*, sediment), and its bank and associated vegetation in ways that make sections of the stream less suitable as habitat for the species (Stephenson and Calcarone 1999). For example, logging activity, recreational mining, or heavy trampling may alter and/or decrease the availability of habitat features 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 (Service 2005) (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 erosion from exposed soils (Service 2005) (PCEs 1 and 2). Heavy recreational use is specifically cited as a potential threat in Subunit 1A (Bear Gulch and Vincent Gulch, the San Gabriel River—East Fork), Subunit 1C (Little Rock Creek), and Subunit 3A (Fuller Mill Creek and Dark Canyon); recreational mining is cited as a potential threat in Subunit 1A (San Gabriel, East Fork) (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, resulting in high recreational use of these areas, there is potential for recreational impacts to all of the areas being designated as critical habitat.

Subunits 1A, 1C, 2A, and 3A may require special management due to threats posed by watershed management activities, including forest thinning or clearing for public safety or fire prevention (*e.g.*, fuel load management), water diversion, application of herbicides, use of fire retardants, and inadvertent spills of hazardous chemicals. Depending on the extent of the management activities 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 due to erosion of exposed soils (Jennings 1998) (PCE 1). Alteration or removal of riparian vegetation could reduce the prey-base available for mountain yellow-legged frogs (PCE 2); however, the presence of a dense canopy cover or riparian vegetation that decreases the amount of basking areas (PCE 2) may render the habitat unsuitable for mountain yellow-legged frogs (USFS 2002). 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 (USFS 2002). Subunit 1C (Little Rock Creek), Subunit 2A (East Fork City Creek), and Subunit 3A (Dark Canyon and Fuller Mill Creek) have potentially high canopy cover and/or dense riparian vegetation within the watershed (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 recovery and conservation of the mountain yellow-legged frog and identifies the following management actions necessary to reduce impacts to mountain yellow-legged frog habitat: (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.* Develop plans for fuels reductions in the watershed; plans will examine potential riparian treatment of high canopy or dense vegetation; and (3) *Hazardous materials spills.* Develop 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 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.

Critical Habitat Designation

We are designating three units, divided into 14 subunits, as critical

habitat for the mountain yellow-legged frog. The critical habitat subunits described below constitute our best assessment at this time of (1) Areas determined to be occupied at the time of listing that contain the primary constituent elements essential for the conservation of the species and that may require special management considerations or protection, and (2) those additional areas found to be essential to the conservation of the mountain yellow-legged frog. The three units designated as critical habitat are: (1) The San Gabriel Mountains Unit, (2) the San Bernardino Mountains Unit, and (3) The San Jacinto Mountains Unit. Tables 1 and 2 provide summaries of approximate area that meets the definition of critical habitat for the mountain yellow-legged frog, area excluded, and area designated as critical habitat by subunit (Table 1), and the approximate area designated as critical habitat for the mountain yellow-legged frog by land ownership (Table 2).

We believe that all lands designated as critical habitat are essential for the conservation and persistence of the mountain yellow-legged frog for the following reasons:

TABLE 1.—APPROXIMATE AREA IN ACRES (AC) AND HECTARES (HA) DETERMINED TO MEET THE DEFINITION OF CRITICAL HABITAT FOR THE MOUNTAIN YELLOW-LEGGED FROG (DEFINITIONAL AREA) AND EXCLUDED FROM THE FINAL CRITICAL HABITAT DESIGNATION (EXCLUDED AREA)

Subunit	Critical habitat subunit name	Definitional area ac (ha)	Excluded area ac (ha)	Total ac (ha)
Unit 1: SAN GABRIEL MOUNTAINS UNIT				
1A	San Gabriel River, East Fork[a]	2,474 ac (1,001 ha)		2,474 ac (1,001 ha).
1B	Big Rock Creek, South Fork[a]	625 ac (253 ha)		625 ac (253 ha).
1C	Little Rock Creek[a]	615 ac (249 ha)		615 ac (249 ha).
1D	Devil's Canyon[a]	279 ac (113 ha)		279 ac (113 ha).
1E	Day Canyon[b]	635 ac (257 ha)		635 ac (257 ha).
1F	San Gabriel River, East Fork, Iron Fork[b]	373 ac (151 ha)		373 ac (151 ha).
1G	Bear Creek[b]	116 ac (47 ha)		116 ac (47 ha).
Unit 2: SAN BERNARDINO MOUNTAINS UNIT				
2A	City Creek, East and West Forks[b]	1,386 ac (561 ha)		1,386 ac (561 ha).
2B	Barton Creek, East Fork[b]	193 ac (78 ha)		193 ac (78 ha).
2C	Whitewater River, North Fork[b]	74 ac (30 ha)		74 ac (30 ha).
Unit 3: SAN JACINTO MOUNTAINS UNIT				
3A	San Jacinto River, North Fork[a]	1,352 ac (547 ha)	433 ac (175 ha)	919 ac (372 ha).
3B	Indian Creek at Hall Canyon[b]	180 ac (73 ha)	54 ac (22 ha)	126 ac (51 ha).
3C	Tahquitz Creek[b]	358 ac (145 ha)		358 ac (145 ha).
3D	Andreas Creek[b]	109 ac (44 ha)		109 ac (44 ha).
Total		8,770 ac (3,549 ha)	487 ac (197 ha)	8,283 ac (3,352 ha).

[a] Occupied at the time of listing in 2002 and currently occupied as of 2005.
[b] Not currently known to be occupied, but historically occupied.

TABLE 2.—APPROXIMATE AREA IN ACRES (AC) AND HECTARES (HA) FOR EACH CRITICAL HABITAT UNIT DESIGNATED FOR THE MOUNTAIN YELLOW-LEGGED FROG BY LANDOWNERSHIP

Subunit	Critical habitat subunit name	Federal ac (ha)	State ac (ha)	Private ac (ha)	Total ac (ha)
Unit 1: SAN GABRIEL MOUNTAINS UNIT					
1A	San Gabriel River, East Fork	2,474 ac (1,001 ha)			2,474 ac (1,001 ha).
1B	Big Rock Creek, South Fork	625 ac (253 ha)			625 ac (253 ha).
1C	Little Rock Creek	615 ac (249 ha)			615 ac (249 ha).
1D	Devil's Canyon	279 ac (113 ha)			279 ac (113 ha).
1E	Day Canyon	635 ac (257 ha)			635 ac (257 ha.
1F	San Gabriel River, East Fork, Iron Fork	373 ac (151 ha)			373 ac (151 ha).
1G	Bear Creek	116 ac (47 ha)			116 ac (47 ha).
Unit 2: SAN BERNARDINO MOUNTAINS UNIT					
2A	City Creek, East and West Fork	1267 ac (513 ha)		119 ac (48 ha)	1,386 ac (561 ha).
2B	Barton Creek, East Fork	193 ac (78 ha)			193 ac (78 ha).
2C	Whitewater River, North Fork	74 ac (30 ha)			74 ac (30 ha).
Unit 3: SAN JACINTO MOUNTAINS UNIT					
3A	San Jacinto River, North Fork	823 ac (333 ha)	96 ac (39 ha)		919 ac (372 ha).
3B	Indian Creek at Hall Canyon	126 ac (51 ha)			126 ac (51 ha).
3C	Tahquitz Creek	243 ac (98 ha)	115 ac (47 ha)		358 ac (145 ha).

TABLE 2.—APPROXIMATE AREA IN ACRES (AC) AND HECTARES (HA) FOR EACH CRITICAL HABITAT UNIT DESIGNATED FOR THE MOUNTAIN YELLOW-LEGGED FROG BY LANDOWNERSHIP—Continued

Subunit	Critical habitat subunit name	Federal ac (ha)	State ac (ha)	Private ac (ha)	Total ac (ha)
3D	Andreas Creek	109 ac (44 ha)	.....	.....	109 ac (44 ha).
Total	.....	7,952 ac (3,218 ha)	211 ac (86 ha)	119 ac (48 ha)	8,283 ac (3,352 ha).

(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 by Jennings and Hayes (1994a)), 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 an approximate total of only 183 surviving adults for the entire southern California range (Backlin *et al.* 2004);

(3) Existing small populations are at a high risk of extinction due to stochastic events (Pimm *et al.* 1988) or deterministic events (Skelly *et al.* 1999); and

(4) Existing small populations are susceptible to other threats, including predation of frogs by non-native trout and human recreation.

Of the 14 subunits being designated as critical habitat, 8 were historically occupied but were not known to be occupied at the time of listing (subunits 1E, 1F, 1G, 2B, 2C, 3B, 3C, and 3D). These subunits were occupied recently (within the past 50 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 essential 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 two limited areas in each mountain range. Even then, one of the two known populations in the San Bernardino Mountains (City Creek) experienced a recent fire (2003) and subsequent flooding that threatens extant populations (Backlin *et al.* 2004).

Presented below are brief descriptions of all units, and justification for their designation as critical habitat for the mountain yellow-legged frog.

Critical Habitat Unit 1: San Gabriel Mountains Unit

Unit 1 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, California. This unit is comprised of seven subunits (1A, 1B, 1C, 1D, 1E, 1F, and 1G), including four subunits (1A, 1B, 1C, and 1D) that were known to be occupied at the time of listing and are currently occupied and three subunits (1E, 1F, 1G) that are not known to be currently occupied but were historically occupied. The populations in Unit 1 represent the northern- and western-most known occurrences of the mountain yellow-legged frog.

Subunit 1A: San Gabriel River, East Fork

Subunit 1A is comprised of 2,474 ac (1,001 ha) of Federal land along approximately 26.5 mi (42.7 km) of several stream reaches in the upper section of the East Fork of the San Gabriel River, including the Bear Gulch, Vincent Gulch, Fish Fork, Iron Fork, and Alder Gulch streams. This currently occupied subunit is located within the remote, mountainous terrain of the Sheep Mountain Wilderness Area in the Angeles National Forest in Los Angeles County, California. Mountain yellow-legged frogs were first recorded in the main stem of the East Fork of the San Gabriel River 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 populations have recently been recorded. The presence of mountain yellow-legged frogs is tenuous, as made evident by population estimates in Bear Gulch of 54 adults for 2001–2003 (95 percent confidence interval 33–93), and no mountain yellow-legged frogs were discovered during 3 survey efforts in 2005 (Backlin and Hitchcock *in litt.* 2005). In neighboring Vincent Gulch, mountain yellow-legged frogs were observed as early as 1933 (Backlin *et al.* 2004). In 2003, Vincent Gulch supported only a very small population containing approximately 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 to avoid human impacts to mountain yellow-legged frogs. In adjacent Prairie Fork, mountain yellow-legged frogs have been observed since 1982, but were not located during surveys in 1998 and 2000. A campground is located there and non-native trout are present (Backlin *et al.* 2004). Mountain yellow-legged frog populations in this watershed, including the areas designated as critical habitat in this subunit, have experienced a number of major climatic events within the past 40 years, including a devastating flood that occurred throughout southern California during 1968–69, when mountain yellow-legged frog populations were seemingly experiencing great reductions in size (Jennings and Hayes 1994b), as well as a severe fire during 1997 at the headwaters of the San Gabriel River, East Fork (Jennings 1999).

Subunit 1A contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Threats to the species and its habitat that may require special management of the PCEs in this subunit include the presence of non-native trout, potential water diversion, human recreation, and recreational mining (USFS 2002). There have been proposals for water removal from the upper part of the drainage above Vincent and Bear Gulch for the winter recreation on Blue Ridge, and there has also been an increased siltation load from recent fires (in 1999) and from instream recreation (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 the San Gabriel River has been stocked with trout (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; however, it contains habitat suitable for 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). As a result of these identified threats, stream segments in this subunit may require special management considerations 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

Subunit 1B is comprised of 625 ac (253 ha) of Federal lands along approximately 6.1 mi (9.9 km) of Big Rock Creek. This currently occupied subunit is located within the Angeles National Forest in Los Angeles County, California. Mountain yellow-legged frogs were recorded 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 (Subunit 1C) (Backlin *et al.* 2004). The adult breeding population of mountain yellow-legged frogs in the South Fork of Big Rock Creek between 2000 and 2003 was estimated to be from 27 to 74 (Backlin *et al.* 2004). Big Rock Creek and Bear Gulch (subunit 1A) represent the largest adult breeding populations throughout the range of the species in southern California.

Subunit 1B contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Threats to the species and its habitat that may require special management of the PCEs in this subunit include the presence of non-native trout (USFS 2002; Backlin *et al.* 2004) and human recreation. In 2002, severe drought conditions resulted in zero flow in the creek and only a few shallow pools remained below the area where mountain yellow-legged frogs occurred. The remaining pools contained an estimated 20 to 100 fish (Backlin *et al.* 2004) per pool. By 2003, the number of trout in the stream reaches below the locations of mountain yellow-legged frogs had greatly decreased, providing opportunity for successful trout removal and trout barrier implementation (Backlin *et al.* 2004). By late 2003, three frogs were found to occur approximately 0.6 mi (1 km) downstream from where the majority of the mountain yellow-legged frog population occurred. Only one mountain yellow-legged frog was found in previous years. It was hypothesized that these three individuals could establish and persist with few or no trout (Backlin *et al.* 2004); however, there is no fish barrier to prevent trout from re-colonizing the upper reaches in years with heavier water flows, such as 2005.

The main stem of Big Rock Creek was stocked with trout 51 times between 1947–1998, and the South Fork of Big Rock Creek was stocked four times from 1948–1953 (Backlin *et al.* 2004). Little information exists on recreational impacts to mountain yellow-legged frog habitat in this subunit, but the subunit borders a campground and 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 the resulting high recreational use of these areas, recreational impacts are likely to occur to some extent within this subunit. As a result, stream segments in this subunit may require special management considerations or protection, such as relocation of hiking trails, public education efforts, other access limitations in or near sensitive areas, and removal of non-native trout.

Subunit 1C: Little Rock Creek

Subunit 1C is comprised of 615 ac (249 ha) of Federal lands along approximately 6.1 mi (9.8 km) of Little Rock Creek. This currently occupied subunit is located within the Angeles National Forest in Los Angeles County, California. Mountain yellow-legged frogs once ranged from its headwaters, and throughout the entire length of this stream to where it empties northwest into the Mojave River. Mountain yellow-legged frogs were observed as early as 1911 in Little Rock Creek. However, frogs are threatened in this creek because a reservoir was constructed in its lower reach where non-native trout were stocked 51 times between 1947 and 1998 (Backlin *et al.* 2004). Today, the current population of mountain yellow-legged frogs is estimated to be approximately 9 individuals, and they are believed to exist only at the highest elevation headwaters of Little Rock Creek (Backlin *et al.* 2004), although side tributaries have not been surveyed extensively.

Subunit 1C contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Threats to the species and its habitat that may require special management of the PCEs in Little Rock Creek include the presence of non-native trout, human recreation, and hazardous materials spills (USFS 2002). Rock climbing and hiking are common activities in the upper headwaters of Little Rock Creek, near the Angeles Crest Highway (Stephenson and Calcarone 1999). An unofficial trail has been blazed to a popular rock-climbing area and follows the creek where mountain yellow-legged frogs occur (USFS 2002). The USGS has recommended that the trail be diverted away from the stream to avoid disturbance to the frogs and their habitat and to minimize pollution. Both the USFS and USGS have identified the need for educational signs in this area 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 removing non-native trout. The potential for hazardous materials spills is also a threat to the habitat within this subunit and 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 during the winter months when water flows are low (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 to study the effects of trout removal on the establishment behavior of frogs. Trout are known to be 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 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 by electro-shocking and dip netting between the waterfall and the enhanced barrier on an annual basis (2002 to present) (Backlin *et al.* 2004). In 2002, 900 trout were removed; in 2003, 90 were removed; in 2004, approximately 250 trout, mostly young of the year, were removed (T. Hovey, CDFG, pers. comm. 2006). Trout removal efforts have significantly depleted trout populations, but have not yet completely removed the trout from that section of the stream.

Subunit 1D: Devil's Canyon

Subunit 1D is comprised of 279 ac (113 ha) of Federal lands along approximately 3.1 mi (4.9 km) of Devil's Canyon. This currently occupied subunit is located within the San Gabriel Wilderness in the Angeles National Forest in Los Angeles County, California. Devil's Canyon is a rugged area which covers approximately 36,215 ac (14,667 ha) and varies in elevation from 1,600 to 8,200 ft (490 to 2,500 m). 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. The habitat has been characterized as excellent for mountain yellow-legged frogs (Jennings 1993), but difficult access has restricted survey efforts to only once each year from 2000 to 2005 (A. Backlin, USGS, pers. comm. 2006). An estimated adult mountain yellow-legged frog breeding population of 20 individuals exists in Devil's Canyon (Backlin *et al.* 2004).

Subunit 1D contains the following features essential to the conservation of the mountain yellow-legged frog: Water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Threats to the species and its habitat that may require special management of the PCEs 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 within this subunit. However, due to the proximity of the San Gabriel Mountains to large urban centers and the resulting high recreational use of these areas, we believe that recreation occurs to some extent within this subunit. As a result, stream segments within this subunit may require special management considerations 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

Subunit 1E is comprised of 635 ac (257 ha) of Federal lands designated as critical habitat along approximately 6.5 mi (10.4 km) of Day Canyon and two of its tributaries. This historically occupied, but not known to be currently occupied, subunit is located in the San Bernardino National Forest in San Bernardino County, California, ranging from Cucamonga Peak to a gauging station in Canyon Wash near the southern border of San Bernardino National Forest. The terrain is steep and characterized by extensive rock/boulder fields and limited soil development (USFS 2002). Mountain yellow-legged frogs were first observed in Day Canyon in 1959 (Los Angeles County Museum 2006), more recently in 1994, and later in the late 1990s (Myers and Wilcox 1999). Surveys in portions of Day Canyon in 1997, 1998, 1999, 2001, and 2004 failed to detect frogs, but found rainbow trout (Backlin *et al.* 2004). Although surveyed during drought years, small mountain yellow-legged frog populations, and incomplete survey efforts of the entire stream may have contributed to the surveyor's inability to detect frogs.

This subunit is essential for the conservation of the mountain yellow-legged frog because it has potential for occupancy as it was historically occupied within the past 15 years, and because habitat quality during that time has not significantly changed. The subunit contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2).

Subunit 1F: San Gabriel River, East Fork, Iron Fork

Subunit 1F is comprised of 373 ac (151 ha) of Federal lands along approximately 3.8 mi (6.1 km) of two streams that drain into the San Gabriel East Fork, the Iron Fork, and the South Fork of Iron Fork. This historically occupied, but not known to be currently occupied, subunit is located in the Angeles National Forest in Los Angeles County, California. This subunit historically contained healthy populations of dozens of individuals from at least 1947 through 1975, and in 1994 (Ford 1975; Jennings 1994). Since then, the difficult access and steep terrain restricted survey efforts only to 2001 (Backlin *et al.* 2002). The 2001 survey was able to determine that there is suitable habitat for the mountain yellow-legged frog in this area (A. Backlin, USGS, pers. comm. 2006).

This subunit is essential for the conservation of the mountain yellow-legged frog because it may constitute an important pathway between frog populations in the East Fork of the San Gabriel River (Subunit 1A) and Big Rock Creek (Subunit 1B), as well as serving as a refuge for frogs from trout predation due to its inaccessibility and steepness. Since mountain yellow-legged frogs can be difficult to detect, especially in low rainfall years, it is possible that frogs still occur in this area, particularly in the upper reaches where surveys have not been recently conducted (A. Backlin, USGS, pers. comm. 2006). This subunit also contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). This subunit has been identified as a potential site for future mountain yellow-legged frog reintroduction because of its remoteness, high potential for recolonization through natural means by dispersal from nearby populations, and PCEs to support populations.

Subunit 1G: Bear Creek

Subunit 1G is comprised of 116 ac (47 ha) of Federal lands along approximately 1.2 mi (2 km) of the upper reaches of Bear Creek, a tributary of the West Fork of the San Gabriel River. This historically occupied, but not known to be currently occupied, subunit is located in the San Gabriel Wilderness Area of the Angeles National Forest in Los Angeles County, California. Mountain yellow-legged frogs were first observed in the Bear Creek area in 1959 (Schoenherr 1976), but two more recent surveys since have failed to detect frogs (Jennings 1993; Backlin *et al.* 2003). It is possible that this subunit harbors unknown populations since it has not been surveyed very intensively in recent years and is located less than a mile east of an extant population in Devil's Canyon (Subunit 1D).

This subunit is essential for the conservation of the mountain yellow-legged frog because it is relatively close to an extant population in Devil's Canyon (Subunit 1D) and contains the following features essential to the

conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). This subunit has been identified as a potential site for future mountain yellow-legged frog reintroduction because of its remoteness, high potential for recolonization through natural means by dispersal from nearby populations, and PCEs to support populations.

Critical Habitat Unit 2: San Bernardino Mountains Unit

Unit 2 is located in the San Bernardino Mountains within the boundaries the San Bernardino National Forest in San Bernardino County, California. This unit is comprised of three subunits (2A, 2B, and 2C), including one subunit (2A) that was known to be occupied at the time of listing and is currently occupied and two subunits (2B and 2C) that are not known to be currently occupied but were historically occupied.

Subunit 2A: City Creek, East and West Forks

Subunit 2A is comprised of 1,267 ac (513 ha) of Federal lands and 119 ac (48 ha) of private lands along approximately 15.1 mi (24.3 km) of both the West and East Forks of City Creek. This currently occupied subunit is located within the San Bernardino National Forest in San Bernardino County, California, where recreational pressure is very low. Between 2002 and 2003, the breeding population of mountain yellow-legged frog in City Creek, East Fork was estimated to be 50 adults (95% confidence interval = 22–127; Backlin *et al.* 2004), at that time, representing one of the largest of the known populations of mountain yellow-legged frog in southern California. The City Creek, West Fork has been surveyed less frequently than City Creek, East Fork, but both adults and tadpoles have been observed at or near the confluence of the two streams and below the confluence of the streams (CDFG 1999, 2001; Myers and Wilcox 1999).

In October 2003, the Old Fire burned the front range of the San Bernardino National Forest and killed most of the riparian vegetation in City Creek. During the following December, subsequent run-off and scouring of the stream channel from winter storms decimated many areas that contained mountain yellow-legged frog habitat by removing most of the sediment and any vegetation (alive or dead) from many stretches of the creek where frogs had previously been recorded (Backlin *et al.* 2004). In hopes of protecting this population from future flooding events and further habitat loss, 11 surviving juvenile frogs were removed from the East Fork and originally taken to the Los Angeles Zoo's captive rearing facility in 2004 by personnel from several agencies, including the Service. Only seven of these frogs survived captivity and were later taken to the San Diego Zoo's Wild Animal Park. These frogs have since died at the Wild Animal Park. Details on the causes of their death are currently under investigation. In September of 2005, mountain yellow-legged frogs demonstrated some resiliency to the recent major flooding events when wild frog metamorphs were rediscovered in City Creek, East Fork below the Highway 330 bridge and above the confluence (Backlin and Hitchcock *in litt.* 2005).

As a result of the 2003 fire and the 2005 floods, parts of City Creek, East Fork may not currently contain all of the PCEs since hydrologists expected that sediments (PCE 1) may have been scoured and transported downstream. However, the portion of the creek north of Highway 330 contained many pools (PCE 1) and the riparian habitat (PCE 2) seemed intact, although the banks themselves were rocky and now lack soil substrate (Dr. E. Pierce, pers. obs. 2004). Therefore, at least in the northern portion of this creek, at least one or more of the primary constituent elements still exist. Over time, it is expected that natural processes will restore the habitat throughout the designated area (*i.e.*, the bank substrates and vegetation cover) and this subunit will again support the PCEs.

Subunit 2A currently contains water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and in the future may contain riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Subunit 2A is essential to the conservation of the species because we expect the PCEs to be naturally restored and because: (1) The habitat previously supported a large adult population; and (2) this population was one of only two known occurrences in the San Bernardino Mountains. Threats to the species and its habitat that may require special management of the PCEs 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 were stocked 11 times between 1949 and 1979 (Backlin *et al.* 2004). Threats also include temporary habitat alteration resulting from flood and fire events. Stream segments in this subunit may require special management considerations or protection such as 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

Subunit 2B is comprised of 193 ac (78 ha) of Federal lands along approximately 2 mi (3.1 km) of the East Fork of Barton Creek. This historically occupied, but not known to be currently occupied, subunit contains a portion of the East Fork of Barton Creek that 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 in the San Bernardino Mountains within the San Bernardino National Forest in San Bernardino County, California. Mountain yellow-legged frogs were first documented in Barton Creek in 1910 (Museum of Vertebrate Zoology 2006). Frogs were not documented again until 1993 (a year with significant precipitation), when approximately 50 adults were observed in this creek (CNDDB 2006).

This subunit is essential for the conservation of the mountain yellow-legged frog because it has a potential for occupancy due to having been recently occupied within the past 15 years, has not had a significant change in habitat quality during that time, and contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2).

Subunit 2C: Whitewater River, North Fork

Subunit 2C is comprised of 74 ac (30 ha) of Federal lands along approximately 0.8 mi (1.2 km) of the Whitewater River. This historically occupied, but not known to be currently occupied, subunit is located in the San Bernardino Wilderness area in the San Bernardino National Forest in San Bernardino County, California. Mountain yellow-legged frogs were first collected on the desert slope between Cabezon and the Whitewater River in 1908 (Museum of Vertebrate Zoology 2006), and additional surveys discovered mountain yellow-legged

frogs in Whitewater River in 1959 (Los Angeles County Museum 2006). Recent surveys in the lower reaches of the Whitewater River in 2001 and 2003, north of the I–10 highway, were unsuccessful in detecting frogs once again. However, due to the difficult access, the upper reaches of the North Fork of the Whitewater River containing PCEs have not been thoroughly surveyed.

This subunit is essential for the conservation of the mountain yellow-legged frog because it contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). This subunit has been identified as a potential site for future mountain yellow-legged frog reintroductions because of its remoteness and the presence of PCEs to support mountain yellow-legged frog populations.

Critical Habitat Unit 3: San Jacinto Mountains Unit

Unit 3 is located in the San Jacinto Mountains in the San Bernardino National Forest, Riverside County, California. This unit is comprised of four subunits (3A, 3B, 3C, and 3D), including one subunit (3A) that was known to be occupied at the time of listing and is currently occupied and three subunits (3B, 3C, 3D) that were historically occupied but are not known to be currently occupied.

Subunit 3A: San Jacinto River, North Fork

Subunit 3A is comprised of 823 ac (333 ha) of Federal lands and 96 ac (39 ha) of State lands along approximately 9 mi (14.5 km) of several stream reaches in the upper section of the North Fork of the San Jacinto River and its tributaries, including Black Mountain Creek, Fuller Mill Creek, and Dark Canyon, within the San Bernardino National Forest in Riverside County, California. In 2003, USGS estimated that there were from 9–13 adult mountain yellow-legged frogs in Fuller Mill Creek, which accounted for approximately 5–7 percent of the total estimated adult population (183 individuals) in southern California (Backlin *et al.* 2004). USGS also estimated that there were 11 adults, 54 juveniles, and 18 first-year larvae in Dark Canyon, which accounted for a large proportion (42 percent) of the total estimated juvenile population in southern California (128 individuals) (Backlin *et al.* 2004). However, Dark Canyon and its upper reaches have not been surveyed as extensively as some of the other occupied streams (*i.e.* it was surveyed only once in 2003) because of its difficult access (Backlin *et al.* 2004). Both Fuller Mill Creek and Dark Canyon represent the most important sources of reproductive potential for this species in the San Jacinto Mountains. Adult mountain yellow-legged frogs were discovered in Black Mountain Creek north of Highway 243 in 1990 (CNDDB 2006). These populations in the San Jacinto Mountains are the southernmost extant populations of the mountain yellow-legged frog. We are excluding approximately 433 ac (175 ha) of non-Federal lands along 4.6 mi (7.4 km) of discontinuous stream reaches in the upper section of the North Fork of the San Jacinto River and its tributaries, including Black Mountain Creek, Fuller Mill Creek, and Dark Canyon from the final designation (*see Exclusion Under Section 4(b)(2) of the Act* for a detailed discussion).

Subunit 3A contains the following features essential to the conservation of the mountain yellow-legged frog: Water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). Threats to the species and its habitat that may require special management of the PCEs in this subunit include the presence of non-native trout, human recreation, and potentially high fuel loads (USFS 2002). The North Fork San Jacinto River was stocked with non-native trout 36 times between 1948 and 1984 (Backlin *et al.* 2004). Stream segments within this subunit may require special management considerations or protection such as removal of non-native trout species; rerouting or reconstruction of hiking trails or some recreational facilities located adjacent to occupied creeks; installation of signage 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

Subunit 3B is comprised of 126 ac (51 ha) of Federal lands along approximately 1.2 mi (1.9 km) of Indian Creek at Hall Canyon. This historically occupied, but not known to be currently occupied, subunit occurs within the San Bernardino National Forest in Riverside County, California. Mountain yellow-legged frogs were first observed in this area in 1908 near Lake Fulmor (Museum of Vertebrate Zoology 2006), and since then, frogs were observed in 1927 (California Academy of Sciences 2006), in the 1950s (Los Angeles County Museum 2006), and again in 1995 (CNDDB 2006). Although surveys have not been conducted in this subunit during the 2000s, frogs may have been difficult to detect because water levels in streams have been very low due to drought conditions, their presumed population size is very small, and not all stream lengths were surveyed during the last survey effort. Approximately 54 ac (22 ha) of non-Federal lands along 0.5 mi (0.9 km) of Indian Creek at Hall Canyon has been excluded from the final designation (*see Exclusion Under Section 4(b)(2) of the Act* for a detailed discussion).

This subunit is essential for the conservation of the mountain yellow-legged frog because it has a potential for occupancy due to having been recently occupied within the past 15 years, has not had a significant change in habitat quality during that time, and contains the following features essential to the conservation of the mountain yellow-legged frog: Water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2).

Subunit 3C: Tahquitz Creek

Subunit 3C is comprised of 243 ac (98 ha) of Federal lands and 115 ac (47 ha) of State lands along approximately 2.2 mi (5.2 km) of the upper reaches of Tahquitz Creek and a disjunct portion of the Willow Creek tributary. This historically occupied, but not known to be currently occupied, subunit occurs in the San Jacinto Wilderness within the San Bernardino National Forest and the Mount San Jacinto State Park in Riverside County, California. Mountain yellow-legged frogs were documented in this stream as early as 1957, again in 1967, and in 1972 (Los Angeles County Museum 2006). Surveys of this stream have been infrequent in recent years, due to its extensive length and ruggedness; the upper and lower reaches, but not the mid-sections, have been surveyed four times during the 2000s. 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).

This subunit is essential for the conservation of the mountain yellow-legged frog because it is relatively close (approximately 2 mi (3.2 km)) to an extant population in the North Fork of the San Jacinto River (subunit 3A) and

contains the following features essential to the conservation of the mountain yellow-legged frog: Water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). This subunit has been identified as a potential site for future mountain yellow-legged frog reintroductions because of its remoteness and the presence of PCEs to support mountain yellow-legged frog populations.

Subunit 3D: Andreas Creek

Subunit 3D is comprised of 109 ac (44 ha) of Federal lands along approximately 1.2 mi (1.9 km) of the upper reaches of Andreas Creek. This historically occupied, but not known to be currently occupied, subunit occurs in the San Jacinto Wilderness within the San Bernardino National Forest in Riverside County, California. Mountain yellow-legged frogs were documented as early as 1912 (California Academy of Sciences 2006), again in 1941 (Museum of Vertebrate Zoology 2006), and in 1978 (Los Angeles County Museum 2006), and were thought to persist there as late as 1994 (Jennings and Hayes 1994b).

This subunit is essential for the conservation of the mountain yellow-legged frog because it is relatively close (approximately 4 mi (6.4 km)) to an extant population in the North Fork of the San Jacinto River (subunit 3A) and contains the following features essential to the conservation of the mountain yellow-legged frog: water sources, such as streams and pools, for breeding and non-breeding activities (PCE 1) and riparian habitat and upland vegetation for foraging and movement activities (PCE 2). This subunit has been identified as a potential site for future mountain yellow-legged frog reintroductions because of its remoteness and presence of PCEs to support mountain yellow-legged frog populations.

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 402.02, 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.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

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. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report, while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion 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)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or 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 jeopardy to the listed species or 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 a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

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

On September 15, 2005, we issued a biological opinion on the Forest Plan for the four southern California national forests. At issue were the effects of the Forest Plan on federally-listed species, including the mountain yellow-legged frog. The goal of the Forest Plan is to describe a strategic direction for the management of the national forests over the next 10 to 15 years. The Forest Plan also divides the National Forests into several ''Land Use Zones,'' including Developed Area Interface, Back Country, Back Country Motorized Use Restricted, Back Country Non-Motorized, Critical Biological, Recommended Wilderness, Existing Wilderness, and Experimental Forest. The land use zones were designed to describe the type of public use or administrative activities allowable. The Forest Plan does not make any decisions regarding USFS site-specific project proposals for implementing the land management plans, nor does it compel managers to implement any specific activity. Overall, the Forest Plan provides general guidance that can either benefit or remain neutral to the mountain yellow-legged frog. Future activities and projects will still receive site-specific environmental review and section 7 consultation.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Mountain Yellow-Legged Frog and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for the mountain yellow-legged frog jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the mountain yellow-legged frog. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the mountain yellow-legged frog in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting mountain yellow-legged frog critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of mountain yellow-legged frog critical habitat units is to support viable core area populations.

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 species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the mountain yellow-legged frog is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the mountain yellow-legged frog include, but are not limited to:

(1) Actions that would alter or reduce water flow in streams. Such activities could include, but are not limited to: Water diversion, recreational activities, water withdrawal, and hydropower generation. These activities could eliminate or reduce the habitat features needed for the growth and reproduction of the mountain yellow-legged frog by decreasing water flows to levels that would adversely affect the species' ability to complete its life cycle.

(2) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to: Livestock grazing, road construction, channel alteration, recreational mining, timber harvest, off-road vehicle use, and fire-fighting activities. These activities could eliminate or reduce the habitat features needed for the growth and reproduction of the mountain yellow-legged frog by increasing the sediment deposition to levels that would adversely affect the species' ability to complete its life cycle.

(3) Actions that would increase canopy cover. Such activities could include, but are not limited to: Protection of unnaturally dense riparian vegetation and construction of bridges. These activities could eliminate or reduce the habitat features needed for the growth of the mountain yellow-legged frog by decreasing the amount of basking sites necessary for the frogs to meet their thermoregulation requirements.

We consider all of the units designated as critical habitat, as well as those that have been excluded or not included, to contain features that contribute to the conservation of the mountain yellow-legged frog. Most units are within the geographic range of the species and were occupied by the species at the time of listing (based on observations made within the last 15 years), and are likely to be used by the mountain yellow-legged frog. Some

units are outside of the geographical area occupied by the species at the time the species was listed. 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 mountain yellow-legged frog. If you have questions regarding whether specific activities may constitute adverse modification of critical habitat, contact the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Exclusion Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under the section the Secretary has discretion as to which factors and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

In our critical habitat designations, we use the provision outlined in section 4(b)(2) of the Act to evaluate those specific areas that we formally designated as critical habitat. We have determined that non-Federal lands within the planning area of the Western Riverside County Multiple Species Habitat Conservation Plan are excluded under section 4(b)(2) of the Act. A detailed analysis of our use of these provisions is provided in the following paragraphs.

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation under section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*), the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. In that decision, the Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing habitat conservation plans (HCPs) or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project, and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the mountain yellow-legged frog. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: That designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical

habitat for the exclusions we are making in this rule because these areas are described in this rule as having habitat containing the features essential to the conservation of the species. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Informing State agencies and local governments about areas that would benefit from protection and enhancement of habitat for the mountain yellow-legged frog is already well established among State and local governments and Federal agencies, as a result of the proposed critical habitat rule.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (*i.e.,* 90–100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species, habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as Habitat Conservation Plans (HCPs), Safe Harbors, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (*e.g.,* reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

We believe that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. For example, less than 17 percent of Hawaii is federally owned, but the State is home to more than 24 percent of all federally listed species, most of which will not recover without State and private landowner cooperation. On the island of Lanai, Castle and Cooke Resorts, LLC, which owns 99 percent of the island, entered into a conservation agreement with the Service. The conservation agreement provides conservation benefits to target species through management actions that remove threats (*e.g.*, axis deer, mouflon sheep, rats, invasive nonnative plants) from the Lanaihale and East Lanai Regions. Specific management actions include fire control measures, nursery propagation of native flora (including the target species), and planting of such flora. These actions will significantly improve the habitat for all currently occurring species. Due to the low likelihood of a Federal nexus on the island, we believe that the benefits of excluding the lands covered by the Memorandum of Agreement exceeded the benefits of including them. As stated in the final critical habitat rule for endangered plants on the Island of Lanai:

> On Lanai, simply preventing ''harmful activities'' will not slow the extinction of listed plant species. Where consistent with the discretion provided by the Act, the Service believes it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation. While the impact of providing these incentives may be modest in economic terms, they can be significant in terms of conservation benefits that can stem from the cooperation of the landowner. The continued participation of Castle and Cooke Resorts, LLC, in the existing Lanai Forest and Watershed Partnership and other voluntary conservation agreements will greatly enhance the Service's ability to further the recovery of these endangered plants.

Cooperative conservation is the foundation of the Service's actions to protect species, and the Service has many tools by which it can encourage and implement partnerships for conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant Program and Landowner Incentive Program provide assistance to private landowners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of Habitat Conservation Plans.

Conservation agreements with non-Federal landowners (*e.g.,* Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can

through coercive methods (61 FR 63854; December 2, 1996).

Benefits of Excluding Lands With HCPs or Other Approved Management Plans From Critical Habitat

The benefits of excluding lands with HCPs or other approved management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Most HCPs and other conservation plans take many years to develop and, upon completion, are consistent with the recovery objectives for listed species that are covered within the plan area. In addition, many conservation plans provide conservation benefits to unlisted sensitive species. In fact, designating critical habitat in areas covered by a pending HCP or conservation plan could result in the loss of some species' benefits if participants abandon the planning process. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for the designation to be perceived as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

Imposing an additional regulatory review as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species could be viewed as a disincentive to those entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species are affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

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

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Relationship of Critical Habitat to Approved Habitat Conservation Plans (HCPs)—Exclusion Under Section 4(b)(2) of the Act

Western Riverside County Multiple Species Habitat Conservation Plan

The Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) is a large-scale, multi-jurisdictional habitat conservation plan (HCP) that addresses 146 listed and unlisted ''Covered Species,'' including the mountain yellow-legged frog, within the 1.26-million ac (510,000 ha) Plan Area in western Riverside County. Participants in the MSHCP include 14 cities in western Riverside County; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; California Department of Parks and Recreation; and the California Department of Transportation (Caltrans). The MSHCP was designed to establish a multi-species conservation program that minimizes and mitigates the expected loss of habitat and the incidental take of Covered Species. On June 22, 2004, the Service issued a single incidental take permit under section 10(a)(1)(B) of the Act to 22 Permittees under the MSHCP for a period of 75 years. The Service granted the participating jurisdictions ''take authorization'' of listed species in exchange for their contribution to the assembly and management of the MSHCP Conservation Area.

In forming the 500,000 ac (202,343 ha) MSHCP Conservation Area, the MSHCP will establish approximately 153,000 ac (61,916 ha) of new conservation lands (Additional Reserve Lands) to complement the approximate 347,000 ac (140,426 ha) of existing natural and open space areas (*e.g.*, State Parks, USFS, and County Park lands known as Public/Quasi-Public (PQP) Lands). The precise configuration of the 153,000 ac (61,916 ha) Additional Reserve Lands is not mapped or precisely identified in the MSHCP but rather is based on textual descriptions within the boundaries of a 310,000-ac (125,453-ha) Criteria Area that is interpreted as implementation of the MSHCP proceeds. Subunits 3A and 3B are located entirely within the MSHCP Plan Area and are comprised of USFS, State Park, County of Riverside, and private lands. The USFS, State Park, and County of Riverside lands within these subunits are considered PQP lands under the MSHCP and as such are included within the overall MSHCP Conservation Area. As Permittees under the MSHCP, the County of Riverside and the California Department of Parks and Recreation have committed to manage their existing open-space lands in concert with the goals of the MSHCP. Thus, the State Park and County of Riverside lands within Subunits 3A and 3B will be managed consistent with conservation goals for the mountain yellow-legged frog.

The private lands within these subunits are not designated as PQP lands or located within the Criteria Area and, thus, are not specifically identified under the plan for inclusion within the MSHCP Conservation Area. Nonetheless, for areas potentially important to the mountain yellow-legged frog that are located outside of the Criteria Area or are not identified as PQP lands, the MSHCP includes special surveys and procedures to further address the conservation of this species in the plan area (Additional Survey Needs and Procedures; Section 6.3.2 of the MSHCP). The plan requires surveys for the mountain yellow-legged frog as part of the review process for public and private projects where suitable habitat is present within a ''Mountain Yellow-Legged Frog Amphibian Survey Area'' (referred to here as Survey Area; Figure 6–3 of the MSHCP, Volume I). These surveys are required until the Additional Reserve Lands are assembled and conservation objectives for the mountain yellow-legged frog are met. If populations of mountain yellow-legged frog are detected by these surveys and

the conservation objectives for the species have not been met, the MSHCP calls for avoidance of impacts to 90 percent of the project site's suitable habitat with long-term conservation value for this species.

Conservation objectives for the mountain yellow-legged frog in the MSHCP include: Conserving primary breeding habitat, secondary wooded habitat, and Core Areas within the San Jacinto Mountains; conducting surveys for this species as part of the MSHCP project review process within the amphibian species survey area; conserving mountain yellow-legged frog localities identified by these survey efforts; and, within the MSHCP Conservation Area, maintaining and, if feasible, restoring ecological processes within occupied habitat and suitable new areas within the Criteria Area and maintaining and monitoring successful reproduction of the species (Riverside County Integrated Project (RCIP) Volume I, Section 9, Table 9–2, pp. 9–37 and 9–38).

Conservation of the mountain yellow-legged frog under the MSHCP is also addressed through implementation of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools procedures (RCIP, Volume I, Section 6.1.2, pp. 6–19—6–25). These procedures recognize the importance of protecting riparian/riverine areas and vernal pools to the overall conservation of aquatic and wetland-dependent species covered by the Plan. The overall purpose of the procedures is to ensure that the biological functions and values of riparian/riverine and vernal pool areas throughout the MSHCP Plan Area are maintained such that the habitat values for the species inside the MSHCP Conservation Area are also maintained. As projects are proposed within the Plan Area, an assessment of the potentially significant effects of those projects on riparian/riverine areas and vernal pools is performed. The documentation for the assessment includes mapping and a description of the functions and values of the mapped areas with respect to the riparian/riverine areas and vernal pools species, including the mountain yellow-legged frog. This assessment is used to identify aquatic resources such as riparian/riverine areas and vernal pools that may be acquired for inclusion in the MSHCP Conservation Area. If an avoidance alternative is not feasible and mapping identifies suitable habitat for the species covered by these procedures, surveys followed by avoidance and minimization measures are required in accordance with the species-specific objectives for those species.

We are excluding approximately 487 ac (197 ha) of non-Federal lands from critical habitat in subunits 3A and 3B within the MSHCP Plan Area under section 4(b)(2) of the Act. These non-Federal lands are comprised of portions of the 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)) along Indian Creek at Hall Canyon. The State Parks and County Park lands will be managed consistent with the conservation goals for the mountain yellow-legged frog under the MSHCP. In addition, all of these lands are within the MSHCP's Survey Area and will receive conservation benefits under the Additional Survey Needs and Procedures policy. Federal lands managed by the USFS are an integral part of the conservation strategy of the MSHCP. However, USFS is not a permittee under the section 10(a)(1)(B) permit for the MSHCP, and therefore, we are designating critical habitat on their lands in subunits 3A and 3B within the MSHCP Plan Area.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We expect the MSHCP to provide substantial protection of the PCEs and special management of essential habitat features for the mountain yellow-legged frog on MSHCP conservation lands. We expect the MSHCP to provide a greater level of management for the mountain yellow-legged frog on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the approved MSHCP and its implementing agreement. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including those areas in the final designation would lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of the MSHCP, which provides for mountain yellow-legged frog conservation. The educational benefits of critical habitat, including informing the public of areas important for the long-term conservation of the species, are still accomplished from material provided on our Web site and through public notice-and-comment procedures required to establish the MSHCP. Further, many educational benefits of critical habitat designation will be achieved through the overall designation, and will occur whether or not this particular location is designated. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the MSHCP.

We have reviewed and evaluated benefits of inclusion and exclusion of critical habitat for the mountain yellow-legged frog. Based on this evaluation, we find that the benefits of excluding land in the planning area for the MSHCP outweigh the benefits of including that portion of critical habitat in subunits 3A and 3B as critical habitat.

Exclusion Will Not Result in Extinction of the Species

We do not believe that the exclusion of 487 ac (197 ha) will result in the extinction of the mountain yellow-legged frog because the MSHCP provides for the conservation of this species and its habitat on currently known occupied areas, as well as areas that may be found to be occupied in the future. Importantly, as we stated in our biological opinion, while some loss of modeled habitat for the mountain yellow-legged frog is anticipated due to implementation of the Plan, we do not anticipate any individual frogs will be taken as a result of our permit issuance for the MSHCP.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusion outweigh the benefits of specifying areas as critical habitat. We cannot exclude areas from critical habitat when exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was

made available for public review on July 3, 2006 (71 FR 37881). We accepted comments on the draft analysis until July 24, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the mountain yellow-legged frog. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the mountain yellow-legged frog, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the mountain yellow-legged frog in areas containing features essential to the conservation of this species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (*e.g.*, lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Mountain yellow-legged frog conservation activities are likely to primarily impact recreation, including trout fishing, hiking, camping, and rock climbing in Angeles and San Bernardino National Forests. In particular, significant uncertainty exists regarding the potential impact to trout fishing. As a result, the analysis applied two methodologies to bound the range of potential costs. The lower-bound estimate assumed that anglers' overall welfare is unaffected, because numerous substitute fishing sites exist. The upper-bound estimate assumed that fishing trips currently taken to streams in essential habitat are lost and not substituted elsewhere. The actual impact will fall between these two bounds. Because the probability distribution of impacts between these bounds is constant, and there is no evidence that suggested the distribution was skewed toward either bound, the average of the two estimates represented the best estimate of trout fishing impacts.

The estimated total future impacts, including costs resulting from modifications to fishing and other types of activity, range from $11.4 million to $12.9 million (undiscounted) over 20 years. Discounted future costs are estimated to be $7.5 million to $8.9 million over this same time period ($704,000 to $842,000 annually) using a real rate of 7 percent, or $9.3 million to $10.8 million ($626,000 to $725,000 annually) using a real rate of 3 percent. In summary, most of the economic impacts were associated with three subunits: Big Rock Creek, South Fork (Subunit 1B), San Jacinto River, North Fork (Subunit 3A), and Little Rock Creek (Subunit 1C).

A copy of the final economic analysis with supporting documents is included in our administrative record and may be obtained by contacting the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or for downloading from the Internet at *http://www.fws.gov/carlsbad/MYLF_Docs.htm*.

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. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than $704,000 to $842,000 annually, applying a 7 percent discount rate, we do not anticipate that this final rule will have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*e.g.*, 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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

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

To determine if the rule could significantly affect a substantial number of small entities, we considered the

number of small entities affected within particular types of economic activities (*e.g.*, recreational fishing, hiking, rock climbing, and residential development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Our analysis determined that costs involving conservation measures for the mountain yellow-legged frog would be incurred for activities involving: (1) Recreational trout fishing activities; (2) recreational hiking activities; (3) recreational rock climbing activities; (4) residential development activity; (5) fire management activities; and (6) other activities on Federal lands. Of these six categories, impacts of frog conservation are not anticipated to affect small entities in three of these categories: residential development, fire management, and other activities on Federal lands. As stated in our economic analysis, residential development is unlikely to be impacted by frog conservation activities for several reasons, including the unsuitability of large-scale development of these private lands due to their location in mountainous areas and easy incorporation into building designs of a 50-foot buffer around streams to protect mountain yellow-legged frog habitat. Furthermore, since neither Federal nor State governments are defined as small entities by the Small Business Administration (SBA), the economic impacts borne by the USFS and the California Department of Fish and Game (CDFG) resulting from implementation of mountain yellow-legged frog conservation activities or modifications to activities on Federal lands, including installation of signs and relocation of hiking trails, fire suppression efforts, monitoring recreational mining activity, development of hazardous spills management plans, and surveying and monitoring activities, are not relevant to the screening analysis. Accordingly, the small business analysis focuses on economic impacts to recreational trout fishing and rock climbing activities.

The economic analysis considers two scenarios to estimate the economic impacts on recreational trout fishing activities. Under Scenario 1, future costs are limited to compliance costs associated with installing fish barriers and removing nonnative trout. The directly regulated entities under Scenario 1 include the USFS and CDFG, both of which are large government agencies. As a result, the directly affected entities are not subject to this screening analysis. Under Scenario 2, economic impacts are also estimated for recreational trout anglers whose activities may be interrupted by mountain yellow-legged frog conservation activities resulting in a decrease in the number of trout fishing trips. Scenario 2 concludes that fishing trips may decrease by as much as 6,800 to 8,200 trips per year. The welfare value lost to an angler is $53.28 per trip. Importantly, this per-trip impact represents the nonmarket value to anglers of a fishing experience, not changes in cash flow to local businesses.

If fewer recreational fishing trips occur to areas within critical habitat, local establishments providing services to anglers may be indirectly affected by mountain yellow-legged frog conservation activities. Decreased visitation may reduce the amount of money spent in the region across a variety of industries, including food and beverage stores, food service and drinking places, accommodations, transportation and rental services. To determine the potential regional economic impacts of decreases in recreational fishing trips, this analysis uses regional economic modeling to quantify the dollar value of goods and services produced and employment generated by consumer expenditures. Regional economic modeling accounts for the interconnectedness of industries within a geographic area that not only supply goods and services to consumers, but also to each other. Thus, spending in one economic sector tends to have a larger impact on the regional economy as a whole. This concept is commonly referred to as the ''multiplier'' effect.

In particular, this analysis utilizes a software package called IMPLAN to estimate the total economic effects of the reduction in economic activity in recreational fishing-related industries in the two counties associated with mountain yellow-legged frog conservation activities, Los Angeles and Riverside Counties. Commonly used by State and Federal agencies for policy planning and evaluation purposes, IMPLAN translates estimates of initial trip expenditures (*e.g.*, food, lodging, and gas) into changes in demand for inputs to affected industries. Changes in output and employment are calculated for all industries and then aggregated to determine the regional economic impact of reduced recreational fishing-related expenditures potentially associated with frog conservation activities.

Based on the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California, average expenditures per fishing trip are approximately $38 (2005), with the bulk of these expenditures occurring in the food service and gasoline industries. This per-trip estimate of expenditures is combined with the number of fishing trips potentially lost due to frog conservation activities (7,100 to 14,300 trips per year) to estimate total expenditures of $271,000 to $543,000 due to recreational trout fishing in proposed critical habitat areas. According to IMPLAN, these recreational fishing-related expenditures contribute between $471,000 and $943,000 per year to the regional economy. When compared to the total output of the industry sectors directly impacted by these expenditures (*e.g.*, groceries, restaurants, gasoline stations, and lodging) in the regional economy of Los Angeles and Riverside counties (or $29.4 billion), the potential loss generated by a decrease in recreational trout fishing trips is less than one hundredth of a percent. Therefore based on these results, this analysis determines no significant effect on recreational fishing-related industries due to frog conservation activities in Los Angeles and Riverside counties.

The economic analysis also estimates welfare losses to rock climbers as the result of a temporary one-year closure of Williamson Rock, adjacent to Little Rock Creek (Subunit 1C) in Los Angeles County. The analysis concludes that a one-year closure will result in the loss of approximately 10,600 to 14,600 rock climbing trips in 2006. The welfare value lost to a climber is $95.20 per trip. Importantly, this per-trip impact represents the nonmarket value to climbers of a climbing experience, not changes in cash flow to local businesses.

As for recreational fishing trips, if fewer rock climbing trips occur to areas within proposed critical habitat, local establishments providing services to rock climbers may be indirectly affected by frog conservation activities. Decreased visitation may reduce the amount of money spent in the region across a variety of industries, including food and beverage stores, food service

and drinking places, and gas and transportation services.

To determine the potential regional economic impacts of decreases in rock climbing trips, this analysis uses IMPLAN to quantify the dollar value of goods and services produced and employment generated by consumer expenditures.

Ideally, this analysis would develop and use a per-trip estimate of expenditures for rock climbing based on the existing economics literature. However, no such data is available for rock climbing activities. In the absence of this information, and in order to understand the magnitude of the potential impacts, this analysis uses the average expenditures of approximately $26.23 per trip reported by the 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation for California for fishing, hunting and wildlife-associated recreation. This per-trip estimate of expenditures is then combined with the number of rock climbing trips potentially lost due to frog conservation activities (a one-year loss of 10,600 to 14,600 trips per year) to estimate total expenditures of $278,000 to $382,000 due to rock climbing in proposed critical habitat areas. According to IMPLAN, these rock climbing-related expenditures contribute between $480,000 and $660,000 per year to the regional economy. When compared to the total output of the industry sectors directly impacted by these expenditures (*e.g.*, groceries, restaurants and gasoline stations) in the regional economy of Los Angeles County (or $21.6 billion), the potential loss generated by a decrease in rock climbing trips is less than one hundredth of a percent. Therefore based on these results, this analysis determines no significant effect on rock climbing-related industries due to frog conservation activities in Los Angeles County.

It is important to note that the estimates of lost fishing and climbing trips assume that the trips are not substituted to another location within these counties (*e.g.*, anglers do not visit another lake or stream in the county where trout continue to be stocked). In addition, the analysis assumes that recreators do not undertake substitute activities (*e.g.*, rock climbers do not go hiking or biking instead of taking trips to Williamson's Rock). If recreators visit substitute sites or choose alternative activities, the regional impacts predicted in this section may be smaller or would not occur.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on the mountain yellow-legged frog and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations under section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule (July 2, 2002; 67 FR 44382) and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

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

(2) Regulation of water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Regulation of timber harvest, grazing, mining, and recreation by the USFS;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities.

It is likely that a developer or other project proponent could modify a project or take measures to protect the mountain yellow-legged frog. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation, and in this final rule. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this rule would result in a significant economic effect on a substantial number of small entities. For the above reasons and based on currently available information, we certify that the rule will not have a significant economic impact on a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act; Federal Highway Administration funding for road improvements; hydropower licenses issued by Federal Energy Regulatory Commission; and regulation of timber harvest, grazing, mining, and recreation by the USFS. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis (see **ADDRESSES**) for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 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 final rule to designated critical habitat for the mountain yellow-legged frog 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 *et seq.*), we make 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 who receive Federal funding, assistance, permits or 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 it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the southern California DPS of the mountain yellow-legged frog in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the southern California DPS of the mountain yellow-legged frog does not pose significant takings implications.

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 final 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 may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have 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 the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation 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 are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final 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 occupied at the time of listing that contain the features essential for the conservation of the mountain yellow-legged frog and no tribal lands that are unoccupied areas that are essential for the conservation of the mountain yellow-legged frog. Therefore, critical habitat for the mountain yellow-legged frog has not been designated on Tribal lands.

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 authors of this package are staff of 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.

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for ''Frog, mountain yellow-legged (southern California DPS)'' 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 rule
Common name	Scientific name						
*	*	*	*	*	*	*	
AMPHIBIANS							
*	*	*	*	*	*	*	
Frog, mountain yellow-legged (southern California DPS).	*Rana muscosa*	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 (*Rana muscosa*), southern California DPS'' in the same alphabetical order in which this species appears in the table at 50 CFR 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Mountain yellow-legged frog (*Rana muscosa*), Southern California DPS

(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:

(i) Water source(s) found between 1,214 to 7,546 ft (370 to 2,300 m) in elevation that are permanent. 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 up to 2 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 includes:

(A) Bank and pool substrates consisting of varying percentages of soil or silt, sand, gravel cobble, rock, and boulders;

(B) Open gravel banks and rocks projecting above or just beneath the surface of the water for sunning posts;

(C) Aquatic refugia, including pools with bank overhangs, downfall logs or branches, and/or rocks to provide cover from predators; and

(D) 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.

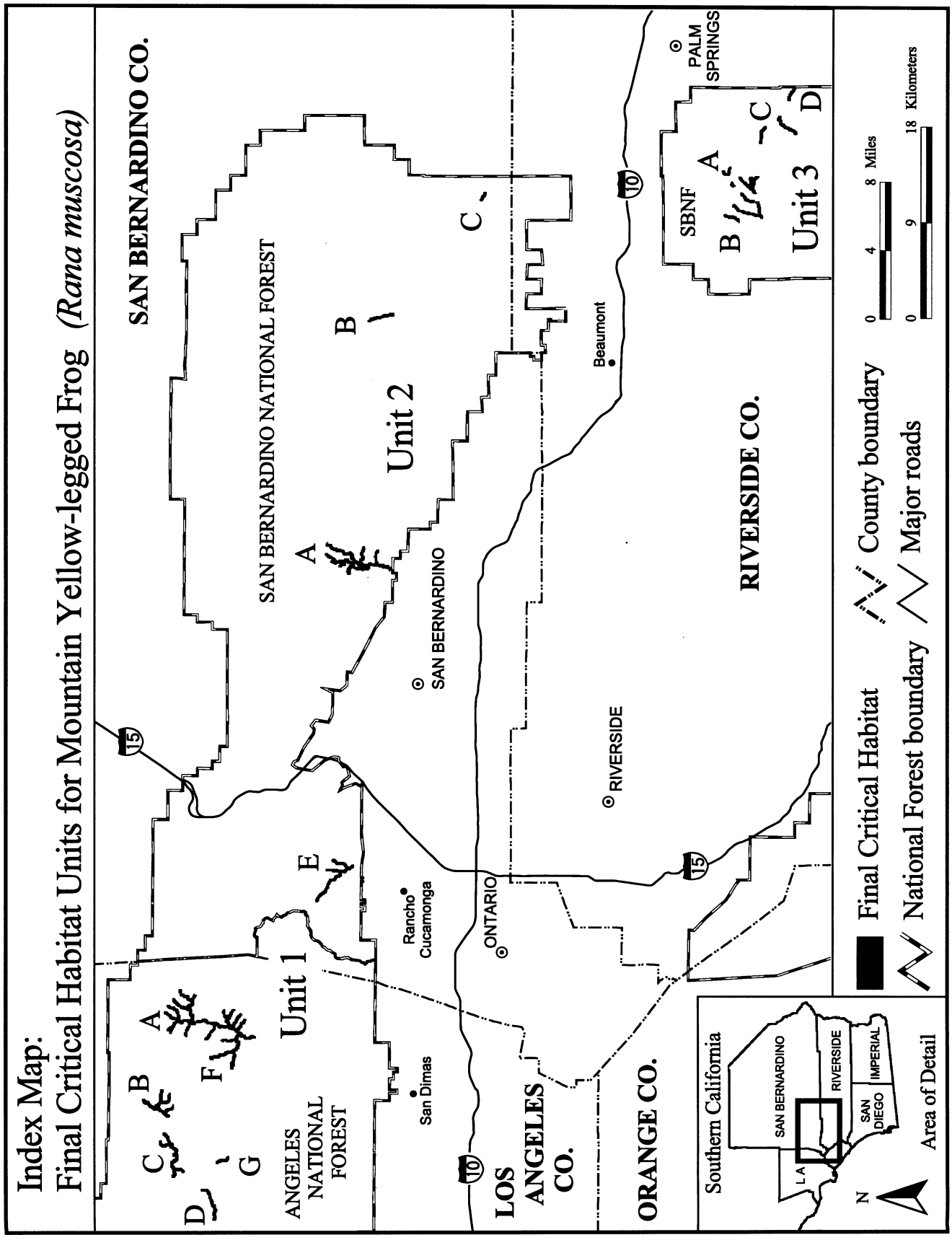
(ii) Riparian habitat and upland vegetation (*e.g.*, ponderosa pine, montane hardwood-conifer, montane riparian woodlands, and chaparral) extending 262 feet (80 m) from each side of the centerline of each identified stream and its tributaries, that provides areas for feeding and movement of mountain yellow-legged frog, with a

canopy overstory not exceeding 85 percent that allows sunlight to reach the stream and thereby provides basking areas for the species.

(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *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. *Note:* Index map of critical habitat units for the southern California DPS of the mountain yellow-legged frog (Map 1) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(5) Unit 1: San Gabriel Mountains Unit, 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.

(A) Land bounded by the following UTM North American Datum of 1927 (NAD27) coordinates (E, N): 434100, 3803300; 434400, 3803300; 434400, 3803100; 434300, 3803100; 434300, 3802900; 434200, 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; 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(B) Map depicting subunit 1A is located at paragraph (5)(vi)(B) of this section.

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

(A) 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; 424300, 3804900; 424100, 3804900; 424100, 3804800; 424000, 3804800; 424000, 3804700; 423900, 3804700; 423900, 3804500; 423800, 3804500; 423800, 3804400; 423700, 3804400; 423700, 3804300; 424000, 3804300; 424000, 3804100; 424100, 3804100; 424100, 3804000; 424200, 3804000; 424200, 3803900; 424300, 3803900; 424300, 3803800; 425200, 3803800; 425200, 3803700; 425700, 3803700; 425700, 3803400; 425400, 3803400; 425400, 3803500; 424400, 3803500; 424400, 3803000; 424500, 3803000; 424500, 3802900; 425100, 3802900; 425100, 3802800; 425300, 3802800; 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.

(B) Map depicting subunit 1B is located at paragraph (5)(vi)(B) of this entry.

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

(A) 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;

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(B) Map depicting subunit 1C is located at paragraph (5)(vi)(B) of this entry.

(iv) Subunit 1D: Devil's Canyon, Angeles National Forest, Los Angeles County, California.

(A) 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.

(B) Map depicting subunit 1D is located at paragraph (5)(vi)(B) of this entry.

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

(A) 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, 3797000; 429700, 3796800; 429800, 3796800; 429800, 3796700; 429900, 3796700; 429900, 3796500; 430000, 3796500; 430000, 3796000; 430100, 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; 429700, 3796400; 429600, 3796400; 429600, 3796600; 429500, 3796600; 429500, 3796800; 429400, 3796800; 429400, 3797200; 429300, 3797200; 429300, 3797300; 429200, 3797300; 429200, 3798000; 429000, 3798000; 429000, 3798300; 429100, 3798300; returning to 429100, 3798400.

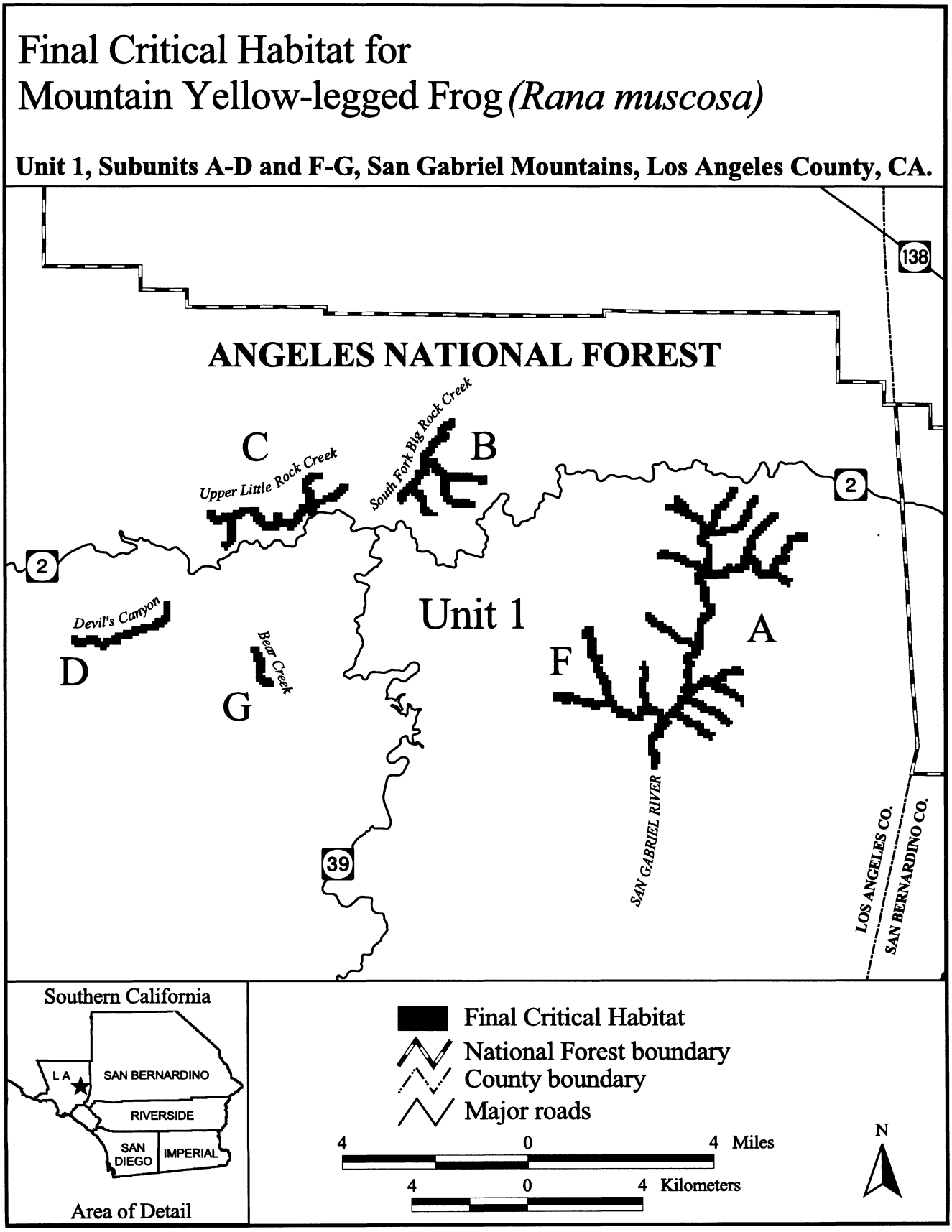
(B) Map depicting subunit 1F is located at paragraph (5)(vi)(B) of this entry.

(vi) Subunit 1G: Bear Creek, Angeles National Forest, Los Angeles County, California.

(A) 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.

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

BILLING CODE 4310–55–P



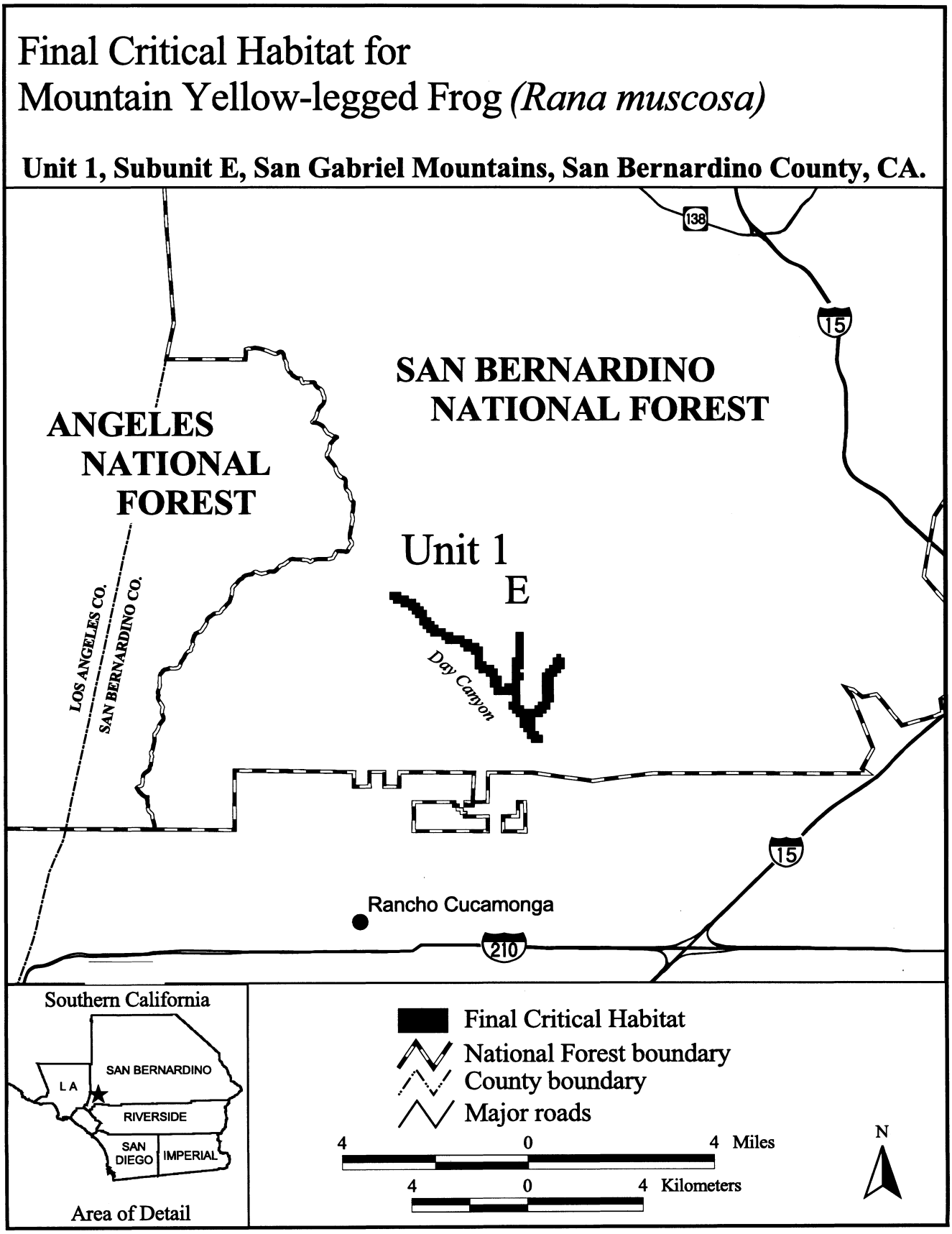
BILLING CODE 4310–55–C

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

(A) 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, 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.

(B) Map of subunit 1E (Map 3) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

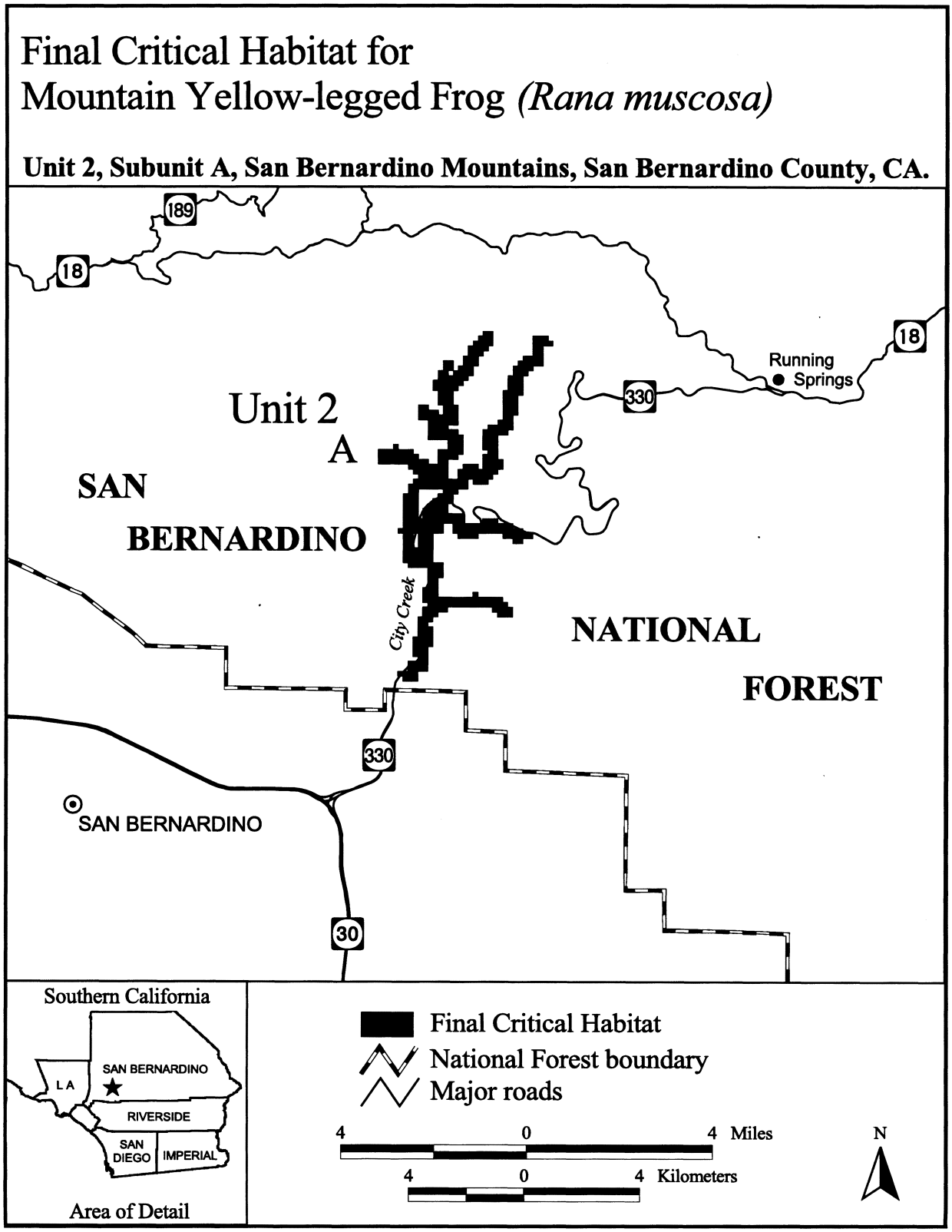
(6) Unit 2: San Bernardino Mountains, San Bernardino National Forest, San Bernardino County, California. From USGS 1:24,000 quadrangle maps Big Bear Lake, Catclaw Flat and Harrison Mountain, California.

(i) Subunit 2A: City Creek, East and West Forks, San Bernardino National Forest, San Bernardino County, California.

(A) 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; 484700, 3782000; 485000, 3782000; 485000, 3781900; 485200, 3781900; 485200, 3781800; 485400, 3781800; 485400, 3781700; 485200, 3781700; 485200, 3781600; 485000, 3781600; 485000, 3781700; 484800, 3781700; 484800, 3781800; 484300, 3781800; 484300, 3781700; 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; 484800, 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; 482700, 3783500; 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, 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.

(B) Map of subunit 2A (Map 4) follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

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

(A) 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.

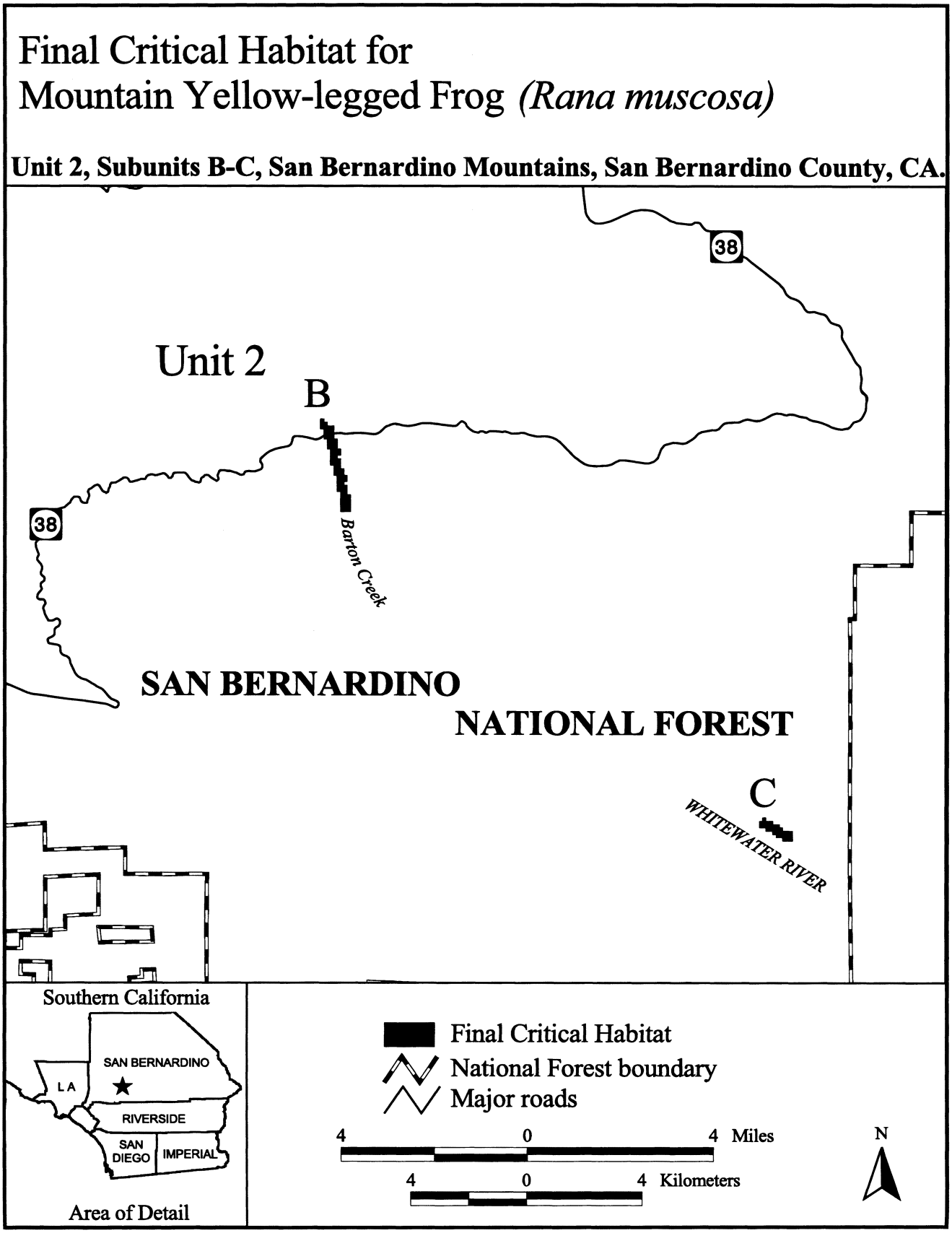
(B) Map depicting subunit 2B is located at paragraph (6)(iii)(B) of this entry.

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

(A) 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.

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

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(7) Unit 3: San Jacinto Mountains, San Bernardino National Forest, Riverside County, California. From USGS 1:24,000 quadrangle maps Lake Fulmor, Palm Springs and San Jacinto Peak, California

(i) Subunit 3A: San Jacinto River, North Fork, San Bernardino National Forest, Riverside County, California.

(A) Land bounded by the following UTM NAD27 coordinates (E, N): 526400, 3743000; 526600, 3743000; 526600, 3742700; 526400, 3742700; 526400, 3742600; 526300, 3742600; 526300, 3742500; 526200, 3742500; 526200, 3742400; 526600, 3742400; 526600, 3742300; 526900, 3742300; 526900, 3742200; 527000, 3742200; 527000, 3742000; 526800, 3742000; 526800, 3742100; 526300, 3742100; 526300, 3742200; 526100, 3742200; 526100, 3742800; 526200, 3742800; 526200, 3742900; 526400, 3742900; returning to 526400, 3743000; land bounded by: 525000, 3742100; 525200, 3742100; 525200, 3742000; 525400, 3742000; 525400, 3741900; 525300, 3741900; 525300, 3741800; 525100, 3741800; 525100, 3741700; 525000, 3741700; 525000, 3741600; 524900, 3741600; 524900, 3741800; 524800, 3741800; 524800, 3741900; 524900, 3741900; 524900, 3742000; 525000, 3742000; returning to 525000, 3742100; land bounded by: 522600, 3741900; 522800, 3741900; 522800, 3741800; 522900, 3741800; 522900, 3741600; 522800, 3741600; 522800, 3741400; 522600, 3741400; 522600, 3741300; 522500, 3741300; 522500, 3741200; 522400, 3741200; 522400, 3741100; 522300, 3741100; 522300, 3740700; 522200, 3740700; 522200, 3740500; 522100, 3740500; 522100, 3740000; 522000, 3740000; 522000, 3739500; 521900, 3739500; 521900, 3739200; 521800, 3739200; 521800, 3739000; 522000, 3739000; 522000, 3739100; 522600, 3739100; 522600, 3739200; 523000, 3739200; 523000, 3739300; 523100, 3739300; 523100, 3739400; 523200, 3739400; 523200, 3739000; 522900, 3739000; 522900, 3738900; 522600, 3738900; 522600, 3738800; 521800, 3738800; 521800, 3738700; 521700, 3738700; 521700, 3738600; 521400, 3738600; 521400, 3738800; 521500, 3738800; 521500, 3738900; 521600, 3738900; 521600, 3739500; 521700, 3739500; 521700, 3739700; 521800, 3739700; 521800, 3740300; 521900, 3740300; 521900, 3740700; 522000, 3740700; 522000, 3740900; 522100, 3740900; 522100, 3741300; 522200, 3741300; 522200, 3741400; 522400, 3741400; 522400, 3741600; 522600, 3741600; returning to 522600, 3741900; land bounded by: 525800, 3741200; 525900, 3741200; 525900, 3740900; 525800, 3740900; 525800, 3740800; 525600, 3740800; 525600, 3740700; 525500, 3740700; 525500, 3740600; 525400, 3740600; 525400, 3740400; 525300, 3740400; 525300, 3740300; 525200, 3740300; 525200, 3740200; 525100, 3740200; 525100, 3740100; 525000, 3740100; 525000, 3740000; 525600, 3740000; 525600, 3740100; 525800, 3740100; 525800, 3740000; 525900, 3740000; 525900, 3739700; 525800, 3739700; 525800, 3739800; 525500, 3739800; 525500, 3739700; 525700, 3739700; 525700, 3739600; 525800, 3739600; 525800, 3739500; 525900, 3739500; 525900, 3739400; 526000, 3739400; 526000, 3739000; 525900, 3739000; 525900, 3739100; 525800, 3739100; 525800, 3739200; 525700, 3739200; 525700, 3739300; 525600, 3739300; 525600, 3739400; 525100, 3739400; 525100, 3739500; 524800, 3739500; 524800, 3739600; 524600, 3739600; 524600, 3739500; 524500, 3739500; 524500, 3739400; 524200, 3739400; 524200, 3739300; 524100, 3739300; 524100, 3739600; 524200, 3739600; 524200, 3739700; 524400, 3739700; 524400, 3739800; 524500, 3739800; 524500, 3740000; 524600, 3740000; 524600, 3740100; 524700, 3740100; 524700, 3740200; 524800, 3740200; 524800, 3740300; 524900, 3740300; 524900, 3740400; 525000, 3740400; 525000, 3740500; 525100, 3740500; 525100, 3740600; 525200, 3740600; 525200, 3740700; 525300, 3740700; 525300, 3740800; 525400, 3740800; 525400, 3740900; 525500, 3740900; 525500, 3741000; 525600, 3741000; 525600, 3741100; 525800, 3741100; returning to 525800, 3741200; and land bounded by 523900, 3741000; 524200, 3741000; 524200, 3740800; 524100, 3740800; 524100, 3740700; 524000, 3740700; 524000, 3740600; 523900, 3740600; 523900, 3740500; 523800, 3740500; 523800, 3740400; 523600, 3740400; 523600, 3740300; 523500, 3740300; 523500, 3740100; 523400, 3740100; 523400, 3739500; 523200, 3739500; 523200, 3739600; 523100, 3739600; 523100, 3740000; 523200, 3740000; 523200, 3740300; 523300, 3740300; 523300, 3740500; 523400, 3740500; 523400, 3740600; 523600, 3740600; 523600, 3740700; 523800, 3740700; 523800, 3740900; 523900, 3740900; returning to 523900, 3741000.

(B) Map depicting subunit 3A is located at paragraph (7)(iv)(B) of this entry.

(ii) Subunit 3B: Indian Creek at Hall Canyon, San Bernardino National Forest, Riverside County, California.

(A) Land bounded by the following UTM NAD27 coordinates (E, N): 521600, 3742800; 521800, 3742800; 521800, 3742500; 521700, 3742500; 521700, 3741700; 521600, 3741700; 521600, 3741500; 521500, 3741500; 521500, 3741400; 521400, 3741400; 521400, 3741200; 521300, 3741200; 521300, 3741100; 520900, 3741100; 520900, 3741200; 521000, 3741200; 521000, 3741300; 521100, 3741300; 521100, 3741400; 521200, 3741400; 521200, 3741600; 521300, 3741600; 521300, 3741700; 521400, 3741700; 521400, 3742300; 521500, 3742300; 521500, 3742700; 521600, 3742700; returning to 521600, 3742800.

(B) Map depicting subunit 3B is located at paragraph (7)(iv)(B) of this entry.

(iii) Subunit 3C: Tahquitz Creek, San Bernardino National Forest, Riverside County, California.

(A) Land bounded by the following UTM NAD27 coordinates (E, N): 529600, 3739000; 529900, 3739000; 529900, 3738900; 531000, 3738900; 531000, 3738800; 531100, 3738800; 531100, 3738700; 531200, 3738700; 531200, 3738600; 531300, 3738600; 531300, 3738500; 531400, 3738500; 531400, 3738400; 531500, 3738400; 531500, 3738200; 531200, 3738200; 531200, 3738300; 531100, 3738300; 531100, 3738400; 531000, 3738400; 531000, 3738500; 530900, 3738500; 530900, 3738600; 530200, 3738600; 530200, 3738700; 529600, 3738700; returning to 529600, 3739000; and land bounded by 532100, 3737000; 532400, 3737000; 532400, 3736900; 532600, 3736900; 532600, 3736600; 532300, 3736600; 532300, 3736700; 532200, 3736700; 532200, 3736500; 531800, 3736500; 531800, 3736300; 531700, 3736300; 531700, 3736200; 531600, 3736200; 531600, 3736100; 531500, 3736100; 531500, 3736000; 531400, 3736000; 531400, 3735700; 531300, 3735700; 531300, 3735500; 531200, 3735500; 531200, 3735300; 531100, 3735300; 531100, 3735100; 531000, 3735100; 531000, 3735000; 530900, 3735000; 530900, 3734900; 530600, 3734900; 530600, 3735200; 530800, 3735200; 530800, 3735300; 530900, 3735300; 530900, 3735500; 531000, 3735500; 531000, 3735800; 531100, 3735800; 531100, 3735900; 531200, 3735900; 531200, 3736200; 531300, 3736200; 531300, 3736300; 531400, 3736300; 531400, 3736400; 531500, 3736400; 531500, 3736600; 531600, 3736600; 531600, 3736700; 531700, 3736700; 531700, 3736800; 532000, 3736800; 532000, 3736900; 532100, 3736900; returning to 532100, 3737000.

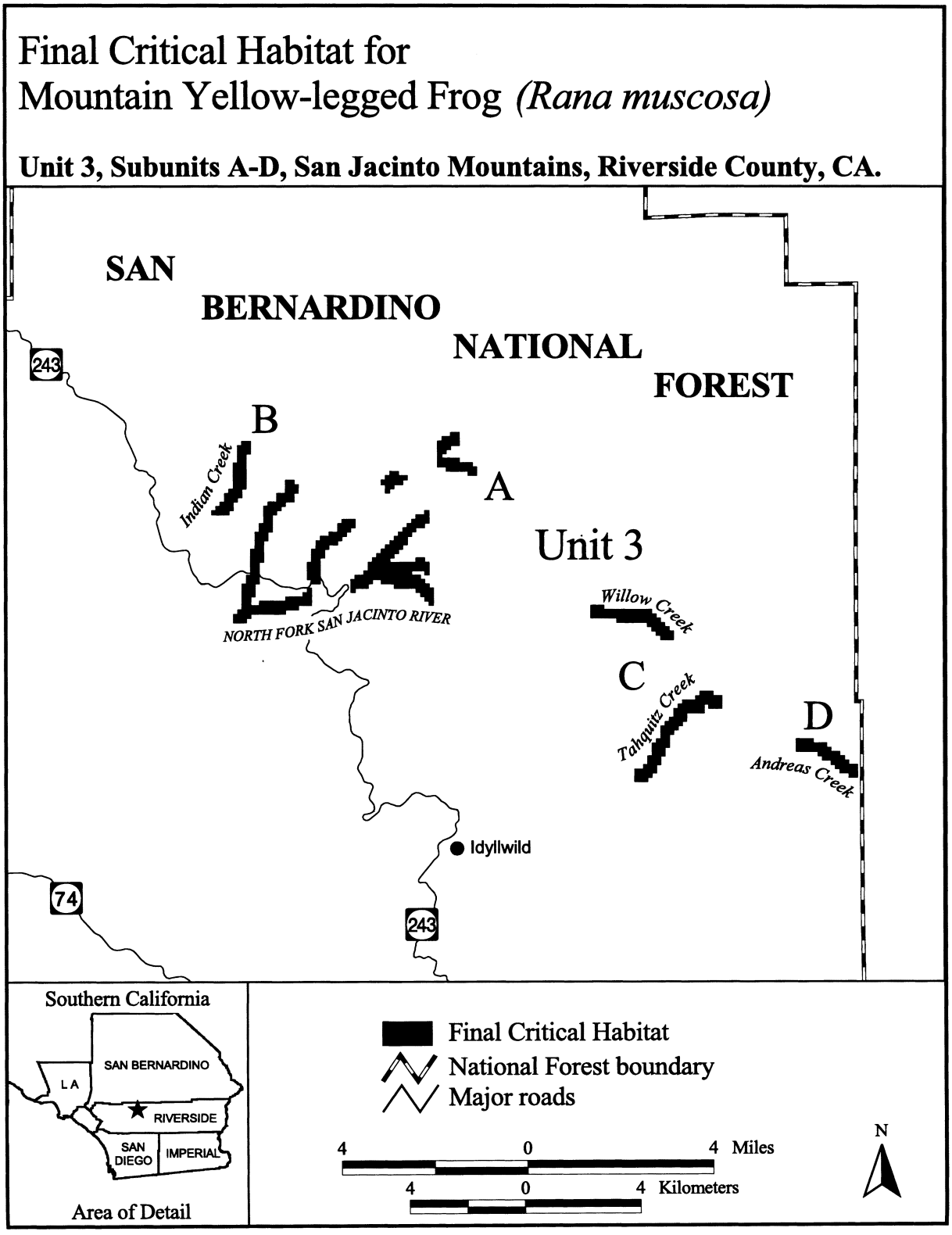
(B) Map depicting subunit 3C is located at paragraph (7)(iv)(B) of this entry.

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

(A) 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.

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

BILLING CODE 4310–55–P



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Dated: September 1, 2006.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–7578 Filed 9–13–06; 8:45 am]

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