

**Dates, Times and Addresses for Public Meetings** regulations as described in the following table:

EPA is conducting five public meetings on the CAFO proposed

Date	Location	Time	Facility
Mon., July 24, 2006 .....	Fayetteville, NC .....	1 p.m.–4 p.m. EST .....	Crown Coliseum, 1960 Coliseum Drive, Fayetteville, NC 28306.
Tues., July 25, 2006 .....	Ames, IA .....	1 p.m.–4 p.m. CST .....	Iowa State Center, Scheman Conference Center, Ames, IA 50011–1113.
Tues., August 1, 2006 .....	Golden, CO .....	1 p.m.–4 p.m. MST .....	Jefferson County Fairgrounds, 15200 W. 6th Ave., Golden, CO 80401.
Wed., August 2, 2006 .....	Dallas, TX .....	9 a.m.–12 p.m. CST .....	Texas A&M—Dallas Agricultural Research & Extension Center (Pavilion), 17360 Coit Rd., Dallas, TX 75252.
Thurs., August 3, 2006 .....	Sacramento, CA .....	8 a.m.–11 a.m. PST .....	CalEPA Building, Byran Sher Auditorium, 1001 I Street, Sacramento, CA 95814.

This **Federal Register** announcement is intended to supplement and refer interested parties to the notice of the public meetings provided on EPA's AFO NPDES Web page, on June 22, 2006. EPA has established a comment period in the proposed rule of 45 days. In scheduling these public meetings, EPA wishes to provide the public the opportunity to be fully informed about the contents of the proposed rule in advance of the date by which comments must be submitted. EPA is utilizing its Web site, which will be updated periodically with specific details concerning location and time, as the principal means of providing information about the public meetings. EPA recommends that those interested in attending a meeting check the Web site for additional information as it becomes available.

Please note that the purpose of these meetings is to enhance public understanding of the proposed regulations for CAFOs. The meetings are not a mechanism for submitting formal comments on the proposal, and formal comments should be submitted following the procedures described in the proposed regulation.

Prior to attending any of these public meetings, please confirm exact location, date and time information via EPA's AFO NPDES Web page (<http://cfpub.epa.gov/npdes/afo/aforule.cfm>).

**Background**

On June 22, 2006, EPA Administrator Stephen Johnson signed the Agency's proposal to revise the regulations for CAFOs in response to the Second Circuit Court of Appeals decision in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). The proposed regulations, publishing in the **Federal**

**Register** on June 30, 2006, respond to the court ruling.

Dated: June 27, 2006.

**Jane S. Moore,**

*Deputy Director, Office of Wastewater Management, Office of Water.*

[FR Doc. E6–10426 Filed 6–30–06; 8:45 am]

**BILLING CODE 6560–50–P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018–AU30**

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

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

**ACTION:** Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for the southern California distinct vertebrate population segment of the mountain yellow-legged frog (*Rana muscosa*), and the availability of a draft economic analysis of the proposed designation of critical habitat. The draft economic analysis estimates the potential total future impacts, including costs resulting from modifications to fishing and other types of activities, to 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 seven percent, or \$9.3 million to \$10.8 million (\$626,000 to \$725,000 annually) using a real rate of three percent. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

**DATES:** We will accept public comments and information until July 24, 2006.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

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

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address.

3. You may fax your comments to 760/431–9624.

4. You may send your comments by electronic mail (e-mail) to [FW1CFWO\\_MYLFPCH@fws.gov](mailto:FW1CFWO_MYLFPCH@fws.gov). For directions on how to submit e-mail comments, see the "Public Comments Solicited" section.

5. You may submit comments via the Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed in **ADDRESSES** (telephone 760/431-9440; facsimile 760/431-9624).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on September 13, 2005 (70 FR 54106), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

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

(2) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

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

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

(5) Whether the benefit of exclusion of any particular area outweighs the benefit of inclusion under section 4(b)(2) of the Act, in particular the lands proposed for exclusion in the proposed rule (non-Federal lands within existing Public/Quasi Public (PQP) lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan);

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

(7) Information on any foreseeable economic, national security, or other

potential impacts resulting from the proposed designation and, in particular, any impacts on small entities or families;

(8) Information on whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what other costs should be included;

(9) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(10) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that may derive from the designation of critical habitat;

(11) Information on whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from any final critical habitat designation;

(12) Information on whether the economic analysis appropriately identifies all costs that could result from the critical habitat designation;

(13) Information on whether there are areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas; and

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

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination concerning designation of critical habitat for the mountain yellow-legged frog will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on the critical habitat proposal, the draft economic analysis, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

If you wish to submit comments electronically, please submit them in an ASCII format and avoid the use of any special characters or any form of encryption. Also, please include "Attn: Mountain Yellow-Legged Frog" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** or submit your comments in writing using one of the alternate methods listed in the **ADDRESSES** section. Please note that the Internet address [FW1CFWO\\_MYLFPCH@fws.gov](mailto:FW1CFWO_MYLFPCH@fws.gov) will be closed at the termination of the public comment period.

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

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for the mountain yellow-legged frog and the draft economic analysis are also available on the Internet at <http://www.fws.gov/carlsbad>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

**Background**

On September 13, 2005, we published a proposed rule in the **Federal Register** (70 FR 54106) to designate critical habitat for the mountain yellow-legged frog. We identified approximately 8,770

acres (ac) (3,549 hectares (ha)) of streams and riparian areas in southern California as containing features essential to the conservation of the mountain yellow-legged frog. From this total, we proposed approximately 8,283 ac (3,352 ha) for designation as critical habitat in three units, including 14 subunits, in Los Angeles, San Bernardino, and Riverside counties, California. Approximately 96 percent of the proposed lands are under Federal ownership on U.S. Forest Service (USFS) lands, and the remaining lands are split between State and private ownership. Approximately 487 ac (197 ha) of non-Federal lands covered under the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) in Riverside County contain features essential to the conservation of the mountain yellow-legged frog and are proposed for exclusion pursuant to section 4(b)(2) of the Act. The first comment period for the proposed critical habitat rule closed on November 14, 2005. For more information on this species, refer to the final rule listing this species as endangered, published in the **Federal Register** on July 2, 2002 (67 FR 44382).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the September 13, 2005 (70 FR 54106), proposed designation of critical habitat for the mountain yellow-legged frog.

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.

Frog conservation activities are likely to primarily impact recreational activities, including trout fishing, hiking, camping, and rock climbing in the Angeles and San Bernardino National Forests. In particular, significant uncertainty exists regarding the potential impact to trout fishing. As a result, the draft economic analysis applies two methodologies to put upper and lower bounds on the range of potential costs. The lower-bound estimate assumes that anglers' overall welfare is unaffected, because numerous substitute fishing sites exist. The upper-bound estimate assumes that fishing trips currently taken to streams in essential habitat are foregone and not substituted elsewhere. The actual impact likely falls between these two bounds. The draft economic analysis assumes that the probability distribution of impacts between these bounds is continuous, and the distribution is not skewed toward either bound. With these two assumptions, the average of the two

estimates represents the best estimate of trout fishing impacts.

Total future impacts, including costs resulting from modifications to fishing and other types of activities, range from \$11.4 million to \$12.9 million (undiscounted) over 20 years. Assuming a three percent discount rate, present value impacts range from \$9.3 million to \$10.8 million over the 20-year period, or an annualized impact of \$626,000 to \$725,000. Assuming a seven percent discount rate, present value impacts range from \$7.5 million to \$8.9 million over the 20-year period, or an annualized impact of \$704,000 to \$842,000. Impacts are dominated by welfare losses and other costs related to recreational fishing, accounting for over 50 percent of the total impact. Lost fishing opportunities occur in Big Rock Creek, South Fork (Subunit 1B), Little Rock Creek (Subunit 1C), and San Jacinto River, North Fork (Subunit 3A). The costs of modifications to fire management practices, costs of modifying hiking trails, and welfare losses to rock climbers resulting from a temporary closure of Williamson Rock in the area of Little Rock Creek (Subunit 1C) account for approximately 30 and 40 percent of the total impact.

#### **Required Determinations—Amended 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 \$842,000 per year, applying a seven 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.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible,

when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

*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 proposed designation of critical habitat for the mountain yellow-legged frog would 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.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our draft economic 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 activities; (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 the easy incorporation into building designs of a 50-foot buffer around streams to protect mountain yellow-legged frog

habitat. Further, 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 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 SBRFA analysis. The total miles of hiking trails potentially affected by frog conservation activities represent a small percentage, less than three percent, of the total miles of hiking trails available to National Forest visitors. Therefore, the draft economic analysis assumes that adequate substitute hiking trails are available to offset potential restrictions placed on recreational hiking within critical habitat and does not estimate any welfare losses to recreational hikers. Accordingly, the small business analysis focuses on economic impacts to recreational trout fishing and rock climbing activities.

The draft economic analysis considers two scenarios to bound the range of potential economic impacts on recreational trout fishing activities. Under the first scenario—the lower-bound estimate—future costs are limited to compliance costs associated with installing fish barriers and removing nonnative trout. The directly regulated entities under this scenario include the USFS and CDFG, both of which are large government agencies. As a result, the directly affected entities are not subject to this SBRFA analysis. Under the second scenario—the upper-bound estimate—economic impacts are also estimated for recreational trout anglers whose activities may be interrupted by frog conservation activities resulting in a decrease in the number of trout fishing trips. This second scenario concludes that fishing trips may decrease by as many as 7,100 to 14,300 trips per year. 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.

The draft economic analysis uses regional economic modeling—in particular a software package called IMPLAN—to estimate the total economic effects of the reduction in economic activity in recreational fishing-related industries in the counties (Los Angeles and Riverside Counties) associated with mountain yellow-legged 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 (in 2005 dollars), 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 one percent.

The economic analysis also estimates welfare losses to rock climbers as the result of a temporary 1-year closure of Williamson Rock, adjacent to Little Rock Creek (Subunit 1C) in Los Angeles County. The analysis concludes that a 1-year closure will result in the loss of approximately 10,600 to 14,600 rock climbing trips in 2006. 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, the draft economic analysis again used 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 are available. Instead, 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. This per-trip estimate of expenditures is then combined with the number of rock climbing trips potentially lost due to frog conservation activities (a 1-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 one percent.

We may exclude areas from the final designation if it is determined that designation of critical habitat in these localized areas would have an impact to a substantial number of businesses and a significant proportion of their annual revenues. Based on the above data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of the proposed designation for a more detailed discussion of potential economic impacts to small business entities.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues. On the basis of our draft economic analysis, the proposed critical habitat designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft

economic analysis of the proposed designation for a more detailed discussion of potential effects on energy supply.

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

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

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, Tribal governments, or the private sector and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that 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. However, 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) The draft economic analysis does not identify or examine small governments that fall within proposed critical habitat because there were no estimates of impacts to small governments. Consequently, we do not

believe that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required.

#### **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 mountain yellow-legged frog. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or

permits to go forward. In conclusion, the designation of critical habitat for the mountain yellow-legged frog does not pose significant takings implications.

#### **Author**

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 26, 2006.

#### **Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6-10458 Filed 6-30-06; 8:45 am]

**BILLING CODE 4310-55-P**