Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in feet (LTD)		Communities affected
		Effective	Modified	

Maps are available for inspection at City Hall, 4909 Countryside Park, Jefferson City, MO 65101.

Unincorporated Areas of Cole County

Maps are available for inspection at the Cole County Courthouse, 301 East High Street, Jefferson City, MO 65101.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 9, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–24287 Filed 9–20–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2010–0085; MO 922110–0–0009–B4]

RIN 1018–AX12

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the March 15, 2011, proposed threatened status for the Chiricahua leopard frog (*Lithobates chiricahuensis*) and proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (Act). We are proposing to revise the primary constituent elements (PCEs) and designate as critical habitat an additional 331 acres (133 hectares) for the Chiricahua leopard frog in Catron and Sierra Counties, New Mexico. We also announce the availability of a draft economic analysis and draft environmental assessment of the proposed designation of critical habitat for Chiricahua leopard frog and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, revisions to the proposed rule, the associated draft economic analysis and draft environmental assessment, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received on or before October 21, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for Docket No. FWS–R2–ES–2010–0085, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2010–0085; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on the Internet at *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the *Public Comments* section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602/242–0210), or by facsimile (602/242–2513). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Chiricahua leopard frog that was published in the **Federal Register** on March 15, 2011 (76 FR 14126), our revised designation of critical habitat provided in this document, our draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Information about the status of the species, especially the Ramsey Canyon portion of the range, including:

(a) Genetics and taxonomy;

(b) Historical and current range, including distribution patterns;

(c) Historical and current population levels, and current and projected trends; and

(d) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to Chiricahua leopard frog and regulations that may be addressing those threats.

(4) Additional information concerning the range, distribution, and population size of Chiricahua leopard frog, including the locations of any additional populations.

(5) Any information on the biological or ecological requirements of Chiricahua leopard frog.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act, including whether there are threats to

the species from human activities, how the designation may ameliorate or worsen those threats, and if any potential increase in threats outweighs the benefits of designation such that the designation of critical habitat may not be prudent.

(7) Specific information on:

(a) The amount and distribution of the Chiricahua leopard frog's habitat;

(b) What areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation, and why;

(c) Special management considerations or protections that the physical and biological features essential to the conservation of the Chiricahua leopard frog that have been identified in this proposal may require, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species, and why.

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

(9) Any probable economic, national security, or other relevant impacts of designating as critical habitat any area that may be included in the final designation. We are particularly interested in any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act.

(12) Information on the projected and reasonably likely impacts of climate change on the Chiricahua leopard frog and the critical habitat areas we are proposing.

(13) Information on the extent to which the description of economic impacts in the draft economic analysis and draft environmental assessment is complete and accurate.

(14) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(15) Information regarding the amended primary constituent elements (PCEs).

If you submitted comments or information on the proposed rule (76 FR 14126; March 15, 2011) during the initial comment period from March 15, 2011, to May 16, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, 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.

You may submit your comments and materials concerning the proposed rule, draft economic analysis, or draft environmental assessment by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2010–0085, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R2–ES–2010–0085, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Chiricahua leopard frog in this document. For more information on previous Federal actions concerning the Chiricahua leopard frog, refer to the proposed designation of critical habitat published in the **Federal Register** on March 15, 2011 (76 FR 14126). For more information on the Chiricahua leopard frog or its habitat, refer to the final listing rule published in the **Federal Register** on June 13, 2002 (67 FR 40790), and the recovery plan (72 FR 30820, June 4, 2007), which are available at the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

We published a proposed rule to list the Chiricahua leopard frog as threatened in the **Federal Register** on June 14, 2000 (65 FR 37343). We published a final rule listing the species as threatened on June 13, 2002 (67 FR 40790). Included in the final rule was a special rule (see 50 CFR 17.43(b)) to exempt operation and maintenance of livestock tanks on non-Federal lands from the section 9 take prohibitions of the Act. For further information on actions associated with listing the species, please see the final listing rule (67 FR 40790; June 13, 2002).

In a May 6, 2009, order from the Arizona District Court, the Secretary of the Interior was required to publish a critical habitat prudency determination for the Chiricahua leopard frog and, if found prudent, a proposed rule to designate critical habitat by December 8, 2010. Because of unforeseen delays related to species taxonomic issues, we requested a 3-month extension to the court-ordered deadlines for both the proposed and final rules. On November 24, 2010, the extension was granted and new deadlines of March 8, 2011, for the proposed rule and March 8, 2012, for the final rule were established for completing and submitting the critical habitat rules to the **Federal Register**.

On March 15, 2011, we published a proposed rule to designate critical habitat for the Chiricahua leopard frog (76 FR 14126). We proposed to designate as critical habitat approximately 11,136 acres (ac) (4,510 hectares (ha)) in 40 unit(s) located in Apache, Cochise, Gila, Graham, Greenlee, Pima, Santa Cruz, and Yavapai Counties, Arizona; and Catron, Hidalgo, Grant, Sierra, and Socorro Counties, New Mexico. That proposal had a 60-day comment period ending May 16, 2011. In addition, because of a taxonomic revision of the Chiricahua leopard frog, we are reassessing the

status of and threats to the currently described species *Lithobates chiricahuensis* and proposed the listing as threatened of the currently described species. The March 15, 2011, proposal had a 60-day comment period, ending May 16, 2011. We received no requests for a public hearing, and, therefore, no public hearing will take place.

Changes From Previously Proposed Critical Habitat

In this notice, we are notifying the public of changes to the proposed critical habitat rule. This revision proposes to add three additional units (Units 41, 42, and 43) and to amend the PCEs. The three new units identified in this proposed rule constitute an addition to the areas we proposed for designation as critical habitat on March 15, 2011 (76 FR 14126). The explanation for this proposed change is discussed below. All areas proposed on March 15, 2011, remain proposed for designation as critical habitat. We will submit a final critical habitat designation for Chiricahua leopard frog to the **Federal Register** on or before March 8, 2012.

This revision proposes three additional units as critical habitat, to include the areas in the vicinity of Kerr Canyon, West Fork Gila River, and Palomas Creek (Service 2008, pp. 1–2; Service 2009; pp. 15–16). As a result of these changes, we are proposing to add 219 ac (89 ha) under Federal and 112 ac (45 ha) under private ownership to the critical habitat designation. In total, we are proposing to designate as critical habitat approximately 11,467 ac (4,644 ha) for the species. For a full description of the previously proposed Units 1 through 40, please see the proposed critical habitat rule (76 FR 14126, March 15, 2011).

In the previous proposed critical habitat rule (76 FR 14126, March 15, 2011), we identified specific sites occupied by Chiricahua leopard frogs at the time of listing in June 2002 that contain sufficient PCEs to support life-history functions essential for the conservation of the species. We included sites where the species was breeding, utilizing historic information and all known breeding and adult locality data available at that time. Subsequently, we discovered that we overlooked three sites in New Mexico that were occupied at the time of listing and contained the essential physical and biological features. Therefore, the purpose of this revision to the proposed critical habitat is to include these three areas that were occupied at the time of listing, are currently occupied by Chiricahua leopard frogs, contain the physical or biological features essential to the conservation of the species, and meet the definition of critical habitat for the species in New Mexico. We believe these additional areas included in the proposed designation, if secured, would provide for the conservation of Chiricahua leopard frog by:

(1) Maintaining the physical and biological features essential to the conservation of the species in New Mexico where the species is known to occur, and

(2) Maintaining the current distribution in New Mexico, thus preserving genetic variation throughout the range of the species and minimizing the potential effects of local extirpation.

Amended Primary Constituent Elements for the Chiricahua Leopard Frog

We are proposing to amend the PCEs proposed in our March 15, 2011, proposed rule (76 FR 14126) to provide more clarification by making them more objective and measurable. By being more objective and measurable, future section 7 consultations on critical habitat will be more precise. The original meaning of the proposed PCEs has not changed. Based on the needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that, in total, the PCEs essential to the conservation of the Chiricahua leopard frog are:

(1) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(a) Standing bodies of fresh water (with salinities less than 5 parts per thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (*e.g.,* stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. 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 non-drought years.

(b) Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(c) Nonnative predators (*e.g.,* crayfish (*Orconectes virilis*), American bullfrogs (*Lithobates catesbeianus*), nonnative predatory fishes) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(d) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(e) Upland areas that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(2) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(a) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

(b) In overland and nonwetted corridors, provides some vegetation cover or structural features (*e.g.,* boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provides some ephemeral, intermittent, or perennial aquatic habitat.

(c) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain predatory nonnative fishes, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

With the exception of impoundments, livestock tanks, and other constructed waters, critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries.

Proposed Critical Habitat Designation

During our compilation of the administrative record for the previous proposal, we found three occupied sites that were overlooked where reproduction has been documented recently in New Mexico, which led to this revision and proposal of additional critical habitat units for the species.

Below, we present a brief description of the three additional units and reasons why we believe they meet the definition of critical habitat for the Chiricahua leopard frog. The physical and biological features of critical habitat in stream and riverine lotic (actively moving water) systems are contained within the riverine and riparian ecosystems formed by the wetted channel and adjacent floodplains within 328 lateral feet (100 lateral meters) on either side of bankfull stage. Further detail may be found in the prior proposal (76 FR 14126, March 15, 2011).

Section 3 of the Act defines critical habitat as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. 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 critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Recovery Unit 6 (White Mountains-Upper Gila, Arizona and New Mexico)

Unit 41: Kerr Canyon

The Kerr Canyon unit contains 19 ac (8 ha) of Gila National Forest land and 6 ac (2 ha) of private land in Catron County, New Mexico. The 1.0-mi (1.6-km) reach extends from Kerr Spring, located on the Gila National Forest, through an intermittent drainage to Kerr Canyon Pond (sometimes referred to as the Kerr Canyon Trick Tank) to include the adjacent private property in Kerr Canyon. This unit is proposed as critical habitat because it was occupied at the time of listing and currently contains sufficient PCEs (PCE 1) to support life-history functions essential for the conservation of the species.

Our records indicate that this area contained a robust breeding population of Chiricahua leopard frogs from 2002 through 2007 (Service 2008, pp. 1–2). However, during surveys conducted in 2008 and 2009, few individuals were observed (Service 2009a, p. 2). We believe the population experienced a mass mortality event or die-off from chytridiomycosis (Service 2009a, p. 2; Service 2009b, p. 1; Service 2009c, p. 1). Tiger salamanders have also recently been found in Kerr Canyon Pond (Service 2009a, p. 2); however, the abundance of these Chiricahua leopard frog predators is currently unknown. Partial surveys of Kerr Canyon Creek and Pond were conducted in 2010, with no frogs observed, yet thorough surveys are needed to determine whether frogs persist in the area.

Kerr Canyon will be managed as an isolated population, as it is currently separated from other populations in Tularosa Creek (Unit 28) that are at least 6.5 mi (10.4 km) away. As recently as 2007, Kerr Canyon supported a robust breeding population (Service 2007a, p. 2); however, the current population status is greatly reduced from 2007 numbers, or may possibly be extirpated. We suspect that observed declines in Chiricahua leopard frog abundance can be attributed to chytridiomycosis or predation. Because of the disease and competition with nonnative species, we find that the essential features in this area may require special management considerations or protection.

Unit 42: West Fork Gila River

The West Fork Gila River unit contains 177 ac (72 ha) of Gila National Forest land in Catron County, New Mexico. This 7.0-mi (11.2-km) reach runs from Turkeyfeather Spring, through an intermittent drainage to the confluence with the West Fork Gila River, then downstream in the West Fork Gila River to confluence with White Creek. Within this unit, the Upper West Fork is divided into two perennial segments by a 1.2-mi (2.0-km) long ephemeral reach between Turkeyfeather Creek and Whiskey Creek. The area within Unit 42 was occupied at the time of listing and currently contains sufficient PCEs (PCE 1) to support life-history functions essential for the conservation of the species.

The West Fork Gila River unit was occupied at the time of listing and Chiricahua leopard frogs are currently present. The species has been observed in West Fork Gila River since 1995, with reproduction observed in 2001 (Blue Earth Ecological Consultants 2002, pp. 16–17; Service 2007, pp. B–64; Service 2009, p. 15). The population is not well studied; however, this section of the West Fork Gila River is long enough that it could support a robust population. This unit will be managed as an isolated population, because it is likely occupied by low numbers of frogs and the nearest known, robust breeding population occurs on Main Diamond in Unit 30, over 5 mi (8 km) away along a perennial water course. There may be some potential for linking this population to Unit 30, if aquatic habitat between the two units could be identified, renovated as needed, and populations of frogs established. However, potential sites and presence of PCEs in these connecting areas have not been investigated in any detail.

Chytridiomycosis has been found on Chiricahua leopard frogs within this unit and nonnative predators are present, including fish, crayfish, and American bullfrogs. Even though a cooperative restoration project between the Service, the U.S. Forest Service, and New Mexico Department of Game and Fish is underway to restore native fish and remove nonnative predatory fish in this unit, the frog population is currently threatened by nonnative predators and chytridiomycosis (Service 2009, pp. 15–16). As such, the essential features in this unit may require special management considerations or protection to minimize impacts resulting from these threats.

Recovery Unit 8 (Black-Mimbres-Rio Grande, New Mexico)

Unit 43: South Fork Palomas Creek

The South Fork Palomas Creek unit consists of 23 ac (9 ha) of Gila National Forest land and 106 ac (43 ha) of private land in Sierra County, New Mexico. This 4.5-mi (7.3-km) reach of South Fork Palomas Creek runs downstream from Wagonbed Canyon to Avilas Well, including Circle Seven Well, but not Avilas Well. This unit is proposed as critical habitat because it was occupied at the time of listing, is currently occupied, and contains sufficient PCEs (PCEs 1 and 2) to support life-history functions essential for the conservation of the species.

Our records for this area are intermittent; however, South Fork Palomas Creek was occupied at the time of listing (Christman 2003, p. 5) and Chiricahua leopard frogs reproduced at Circle Seven Well in 2010 (Christman 2010, p. 1). Currently, we consider this area to be occupied by the species. This unit has undergone management actions that likely have resulted in the persistence of Chiricahua leopard frogs in the South Fork Palomas drainage. Chiricahua leopard frogs were observed in low numbers in 2002 and 2003 in the South Fork Palomas Creek, but Circle Seven Well (a steel rim tank that overflows to an earthen tank) was dry and unoccupied during the time of listing. Due to Circle Seven Well's close proximity to South Fork Palomas Creek, we believe that Circle Seven Well was historically occupied by the Chiricahua

leopard frog. Also, sometime after the 2003 surveys, the well has undergone a conversion from a windmill to solar well, providing a continuous water source and the Circle Seven Well has since been occupied.

Summer rains in 2003, following a wildfire in upland slopes, caused an ash flow into South Fork Palomas Creek. Active management actions in 2003 included capturing 188 Chiricahua leopard frog tadpoles from an ash-affected pool and releasing half of the individuals to the lower portion of South Fork Palomas Creek and releasing half of the individuals farther down the drainage to the steel rim portion of Avilas Well (a steel rim tank that overflows to an earthen tank). Monitoring post-translocations indicated that more than 20 individuals metamorphosed and escaped the steel rim tank, but did not become established in the earthen tank at Avilas Well. To date, Avilas Well remains unoccupied; however, Chiricahua leopard frogs continue to occupy South Fork Palomas Creek, including documented breeding in Circle Seven Well. The proposed area in South Fork Palomas Creek and Circle Seven Well currently contains sufficient PCEs (PCE1) to support life-history functions essential for the conservation of the species.

Under section 4(b)(2) of the Act, private lands in this unit, which are part of the Ladder Ranch, will be considered for exclusion from the final rule. The 156,439-acre Ladder Ranch is owned by Turner Enterprises and is managed for its biodiversity. The Ladder Ranch has been an active participant in the conservation of a number of rare and listed species, including the Mexican wolf (*Canis lupus baileyi*), Bolson tortoise (*Gopherus flavomarginatus*), Chiricahua leopard frog, black-tailed prairie dog (*Cynomys ludovicianus*), American bison (*Bison bison*), and Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*). Management for the Chiricahua leopard frog on the Ladder Ranch included fencing the ranch's waters from bison that graze the area, reestablishment of populations using wild-to-wild translocations, maintenance of wells and tanks, and controlling bullfrogs. The Ladder Ranch also monitors the frogs and habitats, and has recently initiated a captive-breeding facility and program to rear frogs for population augmentation and reestablishment. The Service has provided funding for the captive-breeding program under the Partners for Fish and Wildlife Program and other granting authorities. The Ladder Ranch maintains captive-propagation facilities for the Chiricahua leopard frog under a section 10(a)(1)(A) enhancement of survival permit from the Service.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

To consider the economic impacts ''of specifying any particular area as critical habitat,'' as section 4(b)(2) of the Act requires, the Service must first identify the probable economic impacts that stem from a designation (50 CFR 424.19). We have interpreted ''probable economic impacts'' to be those potential impacts that are reasonably likely to occur as a result of the critical habitat designation. The identification of the probable incremental effects of a critical habitat designation involves comparing the economic and other relevant impacts that would be present without the designation of a particular area as critical habitat with what would be expected if the particular area is included in the designation—in other words, a comparison of the world with and without critical habitat. A key aspect of this comparison requires identifying, at a general level, the additional protections for species (*e.g.,* project modification or conservation measures) or changes in behavior (*e.g.,* increased awareness that may result in reinitiations of consultation, or additional consultations, under section 7 of the Act; compliance with other laws such as State environmental oversight regulations) and the corresponding costs and impacts to society that may result as a consequence of the critical habitat designation. The scope of probable impacts, then, is inevitably determined by the purpose and function of critical habitat as understood at the time of designation and the conservation measures in place prior to the designation for the particular species and its habitat.

The Service traditionally understood the first sentence of section 4(b)(2) of the Act to require consideration of only those impacts that are solely attributable to—that would not occur ''but for''—the proposed critical habitat designation. Under this approach, known as the ''incremental effects analysis'' (otherwise referred to by the courts as the ''baseline approach''), the Service isolates the probable impacts that would result solely from the designation (incremental effects) from those that stem also from other causes, such as the underlying listing determination or other conservation measures being implemented for the species and its habitat (baseline effects). Once identified, the resulting incremental effects of the designation are then used in the balancing analysis, if one is conducted, under the second sentence of section 4(b)(2) for evaluating the benefits of including a particular area in, or excluding it from, critical habitat, and for evaluating compliance with the required determinations.

However, the application of this relatively straightforward paradigm had become problematic by the late 1990s, in light of our interpretations and practices that had the effect of minimizing the role of critical habitat in safeguarding species' recovery. This stemmed in part from the Service's and National Marine Fisheries Service's 1986 joint regulations implementing the interagency consultation provisions of section 7 of the Act (50 CFR 402). Those regulations govern the assessment of

Federal actions that may have adverse impacts on listed species or their critical habitat. They interpret and implement the statute's prohibitions against actions that are likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. However, two key definitions (''jeopardize the continued existence of'' and ''destruction or adverse modification'') had been defined in a similar manner in that they each evaluated impacts on both survival and recovery of a species. Moreover, our general practice had been to infrequently designate critical habitat in areas where the species was not currently present; because consultation under the jeopardy standard can occur wherever the species is present, this limited the circumstances in which a consultation under the adverse-modification standard would take place without a concomitant consultation under the jeopardy standard. Because the section 7 prohibition against Federal agency actions that may result in ''destruction or adverse modification'' is the most significant and direct protection afforded by a critical habitat designation, equating the two standards while making them occur in conjunction with each other made it practically impossible to distinguish the protections stemming from critical habitat (*i.e.,* incremental effects) from those afforded a species by it being listed as an endangered or threatened species (*i.e.,* baseline effects).

As a result, case law significantly influenced the Service's methodology for evaluating the probable economic effects of a critical habitat designation. In 2001, the United States Court of Appeals for the Tenth Circuit held that, in light of the narrow role reserved for critical habitat under the regulations and the Service's view at the time, the Service was legally precluded from relying on the incremental-effects approach. *New Mexico Cattle Growers Ass'n* v. *United States Fish & Wildlife Serv.,* 248 F.3d 1277, 1283–85 (10th Cir. 2001). The court specifically identified the source of the problem as being ''FWS's long held policy position that [critical habitat determinations] are unhelpful, duplicative, and unnecessary.'' The court held that this position was rooted in the interpretations of the ''jeopardy standard'' and the ''adverse modification standard'' in 50 CFR 402.02, which the court saw as being defined either to be ''virtually identical'' or such that the latter was subsumed into the ''jeopardy standard.''

To satisfy section 4(b)(2) of the Act in light of the then-current regulations, the court ruled that the Service must consider all impacts that stem in any way from the proposed critical habitat designation, even if they are also partially caused (or, caused ''coextensively'') by listing. In other words, even if there was no ''but for'' economic impact as a result of critical habitat designation, the Service was still required to consider the coextensive economic impacts. The court did not define ''coextensive'' economic analysis; however, the Services interpreted ''coextensive'' to be the sum of anticipated baseline and incremental economic impacts. As a consequence, following the *New Mexico Cattle Growers* decision, the Service began to apply a coextensive approach that evaluated all costs related to the conservation of the species and its habitat, including those attributed to the species being listed as an endangered or threatened species.

Meanwhile, other courts began to conclude that the definition of ''destruction or adverse modification'' in the 1986 regulations did not adequately fulfill the statute's conservation purpose. In fact, the Ninth Circuit in *Gifford Pinchot Task Force* v. *US. Fish & Wildlife Service,* 378 F.3d 1059 (9th Cir.), *modified,* 387 F.3d 968 (9th Cir. 2004), invalidated the regulatory definition of ''destruction or adverse modification.'' Following the Ninth Circuit's decision, most district court decisions have rejected coextensive economic analyses. For example, the court in *Cape Hatteras Access Pres. Alliance v DOI,* 344 F. Supp. 2d 108, 128–30 (D.D.C. 2004) (*Cape Hatteras*) found that an evaluation of the incremental effect of a critical habitat designation was reasonable and permissible. In that decision the court stated, ''[t]he baseline approach is a reasonable method for assessing the actual costs of a particular critical habitat designation. To find the true cost of a designation, the world with the designation must be compared to the world without it * * *. In order to calculate the costs above the baseline, those that are the ''but for'' result of designation, the agency may need to consider the economic impact of listing and other events that contribute to and fall below the baseline.''

Similarly, in 2010, the Ninth Circuit concluded that the faulty underlying premises that led to the invalidation of the incremental effects (baseline approach) in 2001 no longer applied, and that our consideration of ''but for'' impacts in the increment above the baseline is permissible under the Act (*Arizona Cattle Growers Ass'n* v. *Salazar,* 606 F.3d 1160, 1173 (9th Cir. 2010). It therefore held, in light of this change in circumstances, that ''the FWS may employ the baseline approach in analyzing a critical habitat designation.'' In so holding, the court noted that the baseline approach is ''more logical than'' the coextensive approach. The Ninth Circuit further reaffirmed its conclusion in *Home Builders Ass'n of Northern California* v. *U.S. Fish & Wildlife Serv.* 616 F.3d 983 (9th Cir. 2010), in which plaintiffs challenged the use of the Service's incremental-effects (baseline) approach. The Court held that the Service properly analyzed the economic impacts of the critical habitat designation for vernal pool species and stated that the plain language of the Act directs the agency to consider only those impacts caused by the critical habitat designation itself.

In 2008, the Solicitor for the Department of the Interior drafted a Memorandum Opinion summarizing case law on the Secretary's authority to exclude areas from a critical habitat designation under section 4(b)(2) of the Act, including the appropriate use of economic analyses in critical habitat determinations (Department of the Interior Solicitor Memorandum, October 3, 2008, The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act (Opinion M–37016)). In this opinion, the Solicitor concluded that

> the reasoning in the *Cape Hatteras* line of cases was persuasive for the proposition that ''to find the true cost of a designation, the world with the designation must be compared to the world without it.'' Cape Hatteras, 344 F. Supp. 2d at 130. The purpose of excluding an area from critical habitat is to avoid the impacts of the designation, or to realize the benefits that the Secretary determines will flow from that exclusion. Benefits of exclusion are often in the form of avoiding a cost imposed by the designation. By definition, when impacts are completely ''coextensive,'' ''such that they will occur even if the area is not designated, any ''cost'' imposed by the designation will not be avoided if the area at issue is excluded. Therefore, exclusion of the area based on such costs would serve no purpose.

Consistent with recent case law and the 2008 Solicitors Memorandum Opinion, the Service concludes that the appropriate analysis to consider economic impacts of a critical habitat designation is to limit the evaluation of the probable economic effects to those that are incremental to, or result solely from, the designation itself. The Service also believes that the use of an incremental-effects analysis is sufficient to fulfill the requirement under section

4(b)(2) of the Act. Therefore, the Service applied the incremental-effects approach to evaluate the probable economic impacts of critical habitat designation for the Chiricahua leopard frog.

Since the Service currently does not have an operative regulatory definition of ''destruction or adverse modification,'' the Service attempted to clarify the difference between the jeopardy and adverse modification standards for the Chiricahua leopard frog critical habitat in our Incremental Effects Memorandum. This memorandum outlined typical conservation actions, project modifications, and minimization measures that would be requested by the Service to meet the ''not likely to destroy or adversely modify'' standard, above what would be requested to avoid jeopardy to the species. This evaluation of the incremental effects as outlined in the Incremental Effects Memorandum has been used as the basis to develop the draft economic analysis of this proposed designation of critical habitat.

The purpose of the draft economic analysis is to identify and analyze the probable incremental economic impacts associated with the proposed critical habitat designation for the Chiricahua leopard frog. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2 of the draft economic analysis.

The draft economic analysis provides estimated costs of the reasonably probable incremental economic impacts of the proposed critical habitat designation for the Chiricahua leopard frog over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The draft economic analysis quantifies economic impacts of Chiricahua leopard frog conservation efforts associated with the following categories of activity:

(1) Improperly managed livestock grazing: Includes drying of stock tanks and changes to water quality due to cattle feces.

(2) Mining: Includes copper mining operations and associated mining-related contaminants and runoff.

(3) Water diversion and management: Includes groundwater pumping, agricultural development, and operations of dams and diversions.

(4) Residential and commercial development and transportation: Includes sedimentation and runoff associated with construction.

(5) Fires and fire suppression activities: Includes ash flow and fire retardants from fires and fire suppression activities; and,

(6) Nonnative species introductions/disease: Includes saltcedar control, stocking of predatory fishes, bullfrogs, or crayfish, as well as chytridiomycosis (an infectious fungal disease).

Because a significant level of baseline protection exists for the Chiricahua leopard frog, no significant economic impacts are likely to result from the designation of critical habitat for this species. Incremental costs are limited to administrative efforts of new and reinitiated consultations to consider adverse modification of critical habitat for the frog.

The draft economic analysis estimates that the present value impacts of critical habitat designation are $1,300,000 assuming a 7 percent real discount rate. This figure represents an annualized impact of approximately $115,000. As stated above, these costs represent expectations of additional administrative effort as part of future section 7 consultations that consider both jeopardy and adverse modification.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Draft Environmental Assessment

The purpose of the draft environmental assessment, prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the Chiricahua leopard frog. In the draft environmental assessment, three alternatives are evaluated: Alternative A, the proposed rule with exclusion areas; Alternative B, proposed rule without exclusion areas; and the no action alternative. Under Alternative A, critical habitat units on private and other lands could potentially be excluded in the final rule based on economic impact, national security, or other relevant impacts. The potential exclusion areas discussed in the proposed rule include lands owned by the American Museum of Natural History, Beatty's Guest Ranch, Diamond A Ranch, Magoffin Ranch, San Rafael Ranch, State of Arizona, The Nature Conservancy, and Turner Enterprises. Alternative B is the current proposal, and the no action alternative is equivalent to no designation of critical habitat for Chiricahua leopard frog. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental assessment, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our designation of critical habitat.

Required Determinations—Amended

In our March 15, 2011, proposed rule (76 FR 14126), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the draft economic analysis data and the draft environmental assessment, we are amending our required determination concerning E.O. 12866 (Regulatory Planning and Review), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its

determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), 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 effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 Chiricahua leopard frog would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as livestock management, fire management, habitat management, water management, transportation, recreation, and development. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Chiricahua leopard frog is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Chiricahua leopard frog. We estimate that up to 171 small entities may be affected by section 7 consultations stemming from this rule. Annualized incremental economic impacts to small businesses range from $254 per year for transportation and residential and commercial development to $8,390 per year for livestock management. Although the analysis did not have access to average annual revenues for small entities in the proposed critical habitat areas, and thus estimated annualized impacts as a percentage of annual revenues could not be determined, it is unlikely that these impacts would be significant. Please refer to the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. Estimated incremental costs that may be borne by small entities consist of additional administrative costs for livestock management, water management, transportation, and development activities, but it is unlikely that these impacts would be significant. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use

Pursuant to Executive Order No. 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' issued May 18, 2001, Federal agencies must prepare and submit a ''Statement of Energy Effects'' for all ''significant energy actions.'' The purpose of this requirement is to ensure that all Federal agencies ''appropriately weigh and consider the effects of the Federal Government's regulations on the supply, distribution, and use of energy.'' The Office of Management and Budget provides guidance for implementing this Executive Order, outlining nine outcomes that may constitute ''a significant adverse effect'' when compared with the regulatory action under consideration (Memorandum For Heads of Executive Department Agencies, and Independent Regulatory Agencies, Guidance For Implementing E.O. 13211, M–01–27, Office of Management and Budget, July 13, 2001, *http://www.whitehouse.gov/omb/memoranda/m01-27.html*.). As none of the nine outcomes is relevant to this analysis, energy-related impacts associated with the Chiricahua leopard frog conservation activities within the proposed critical habitat are not expected. Therefore, we have made a preliminary determination that this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) 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, or 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; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

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

(2) We do not believe that this rule will significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Chiricahua leopard frog in a takings implications assessment. 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 allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of critical habitat does not pose significant takings implications for lands within or affected by the designation. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

National Environmental Policy Act (NEPA)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).] However, when the range of the species includes States within the Tenth Circuit, such as that of the Chiricahua leopard frog, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Chiricahua leopard frog. Our preliminary determination is that the designation of critical habitat for the Chiricahua leopard frog would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 76 FR 14126, March 15, 2011, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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 § 17.95, amend paragraph (d) by adding an entry for ''Chiricahua leopard frog (*Lithobates chiricahuensis*),'' at § 17.95(d) is proposed to be amended by revising proposed paragraphs (d)(2), (d)(5),and and by adding new paragraphs (d)(46) through (d)(48) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Chiricahua leopard frog (*Lithobates chiricahuensis*)

* * * * *

(2) The primary constituent elements of critical habitat for the Chiricahua leopard frog are:

(i) Aquatic breeding habitat and immediately adjacent uplands exhibiting the following characteristics:

(A) Standing bodies of fresh water (with salinities less than 5 parts per

thousand, pH greater than or equal to 5.6, and pollutants absent or minimally present), including natural and manmade (*e.g.,* stock) ponds, slow-moving streams or pools within streams, off-channel pools, and other ephemeral or permanent water bodies that typically hold water or rarely dry for more than a month. 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 non-drought years.

(B) Emergent and or submerged vegetation, root masses, undercut banks, fractured rock substrates, or some combination thereof, but emergent vegetation does not completely cover the surface of water bodies.

(C) Nonnative predators (*e.g.,* crayfish, American bullfrogs, nonnative predatory fishes) absent or occurring at levels that do not preclude presence of the Chiricahua leopard frog.

(D) Absence of chytridiomycosis, or if present, then environmental, physiological, and genetic conditions are such that allow persistence of Chiricahua leopard frogs.

(E) Upland areas that provide opportunities for foraging and basking that are immediately adjacent to or surrounding breeding aquatic and riparian habitat.

(ii) Dispersal and nonbreeding habitat, consisting of areas with ephemeral (present for only a short time), intermittent, or perennial water that are generally not suitable for breeding, and associated upland or riparian habitat that provides corridors (overland movement or along wetted drainages) for frogs among breeding sites in a metapopulation with the following characteristics:

(A) Are not more than 1.0 mile (1.6 kilometers) overland, 3.0 miles (4.8 kilometers) along ephemeral or intermittent drainages, 5.0 miles (8.0 kilometers) along perennial drainages, or some combination thereof not to exceed 5.0 miles (8.0 kilometers).

(B) In overland and nonwetted corridors, provides some vegetation cover or structural features (*e.g.,* boulders, rocks, organic debris such as downed trees or logs, small mammal burrows, or leaf litter) for shelter, forage, and protection from predators; in wetted corridors, provides some ephemeral, intermittent, or perennial aquatic habitat.

(C) Are free of barriers that block movement by Chiricahua leopard frogs, including, but not limited to, urban, industrial, or agricultural development; reservoirs that are 50 acres (20 hectares) or more in size and contain predatory nonnative fishes, bullfrogs, or crayfish; highways that do not include frog fencing and culverts; and walls, major dams, or other structures that physically block movement.

* * * * *

(5) *Note:* Chiricahua Leopard Frog Critical Habitat Index Map follows:

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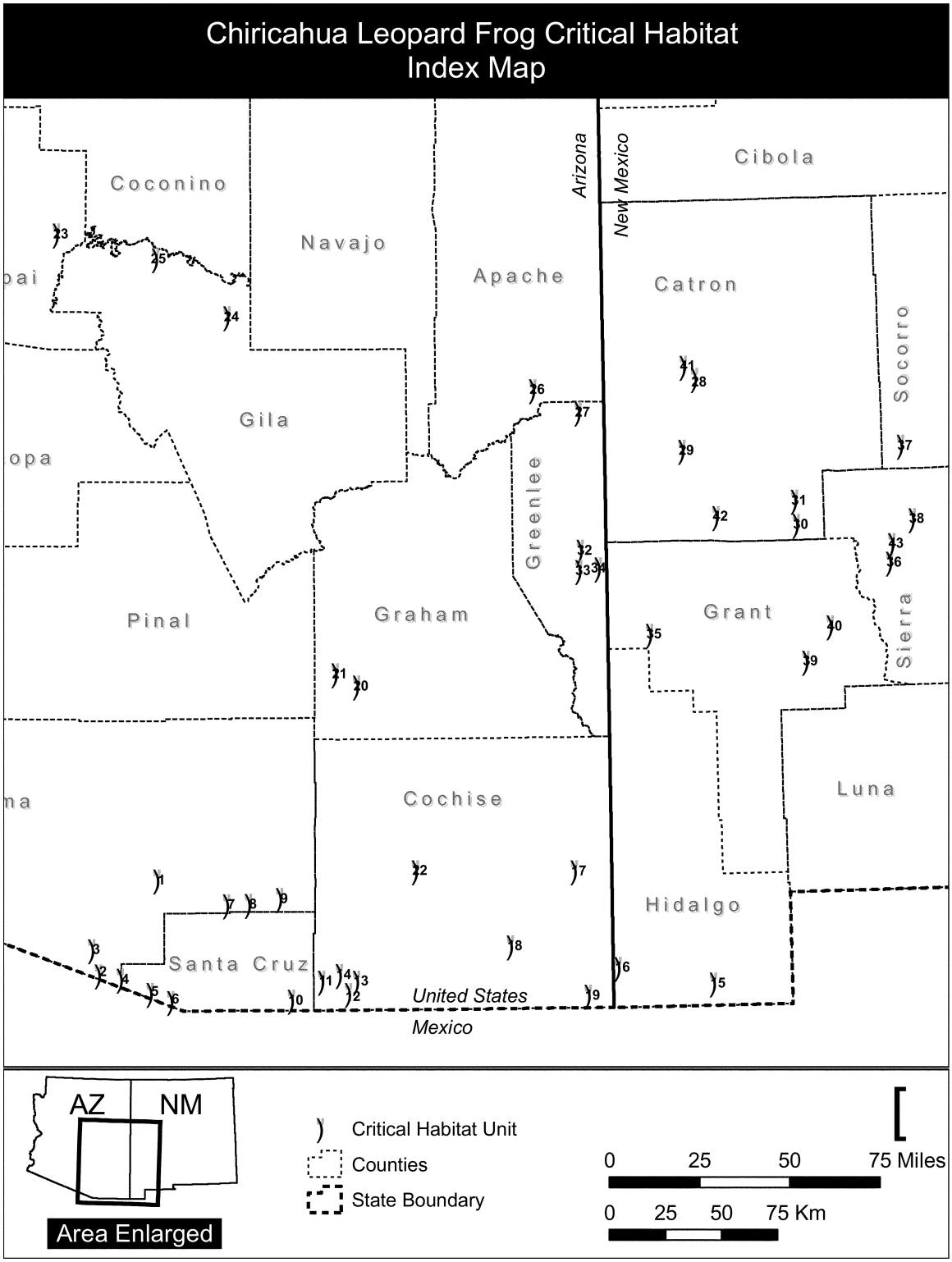
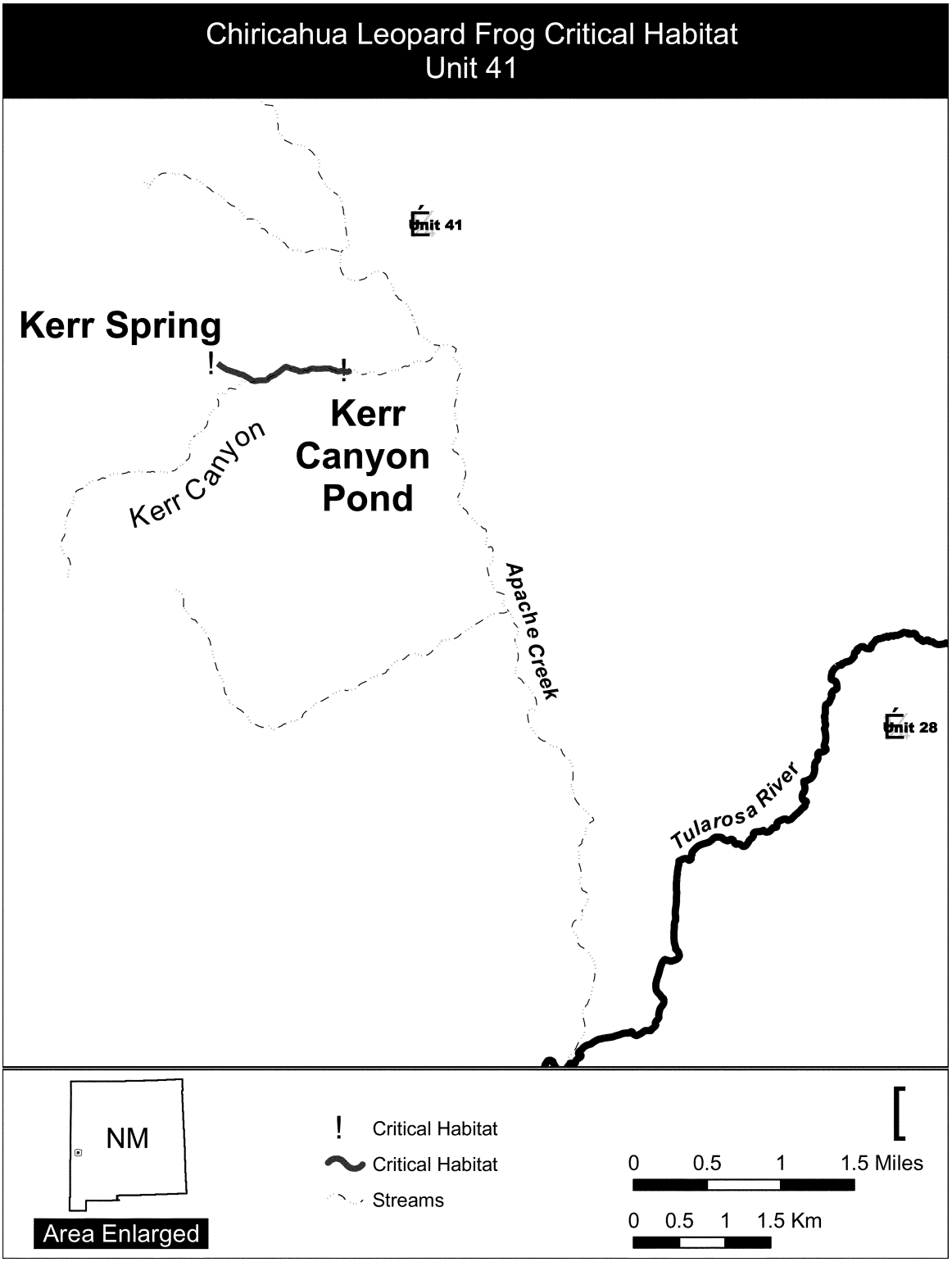

Chiricahua Leopard Frog Critical Habitat
Index Map
Coconino
Navajo
Apache
Arizona
New Mexico
Cibola
Catron
Socorro
Gila
Greenlee
Pinal
Graham
Grant
Sierra
Cochise
Luna
Hidalgo
Santa Cruz
United States
Mexico
AZ
NM
Area Enlarged
Critical Habitat Unit
Counties
State Boundary
0 25 50 75 Miles
0 25 50 75 Km

* * * * *

(46) Unit 41: Kerr Canyon, Catron County, New Mexico.

(i) From Kerr Spring (33.900561 N, 108.664732 W) downstream in unnamed drainage in Kerr Canyon to Kerr Canyon Pond (33.649088 N, 108.517011 W), a distance of approximately 0.98 drainage miles (1.58 km).

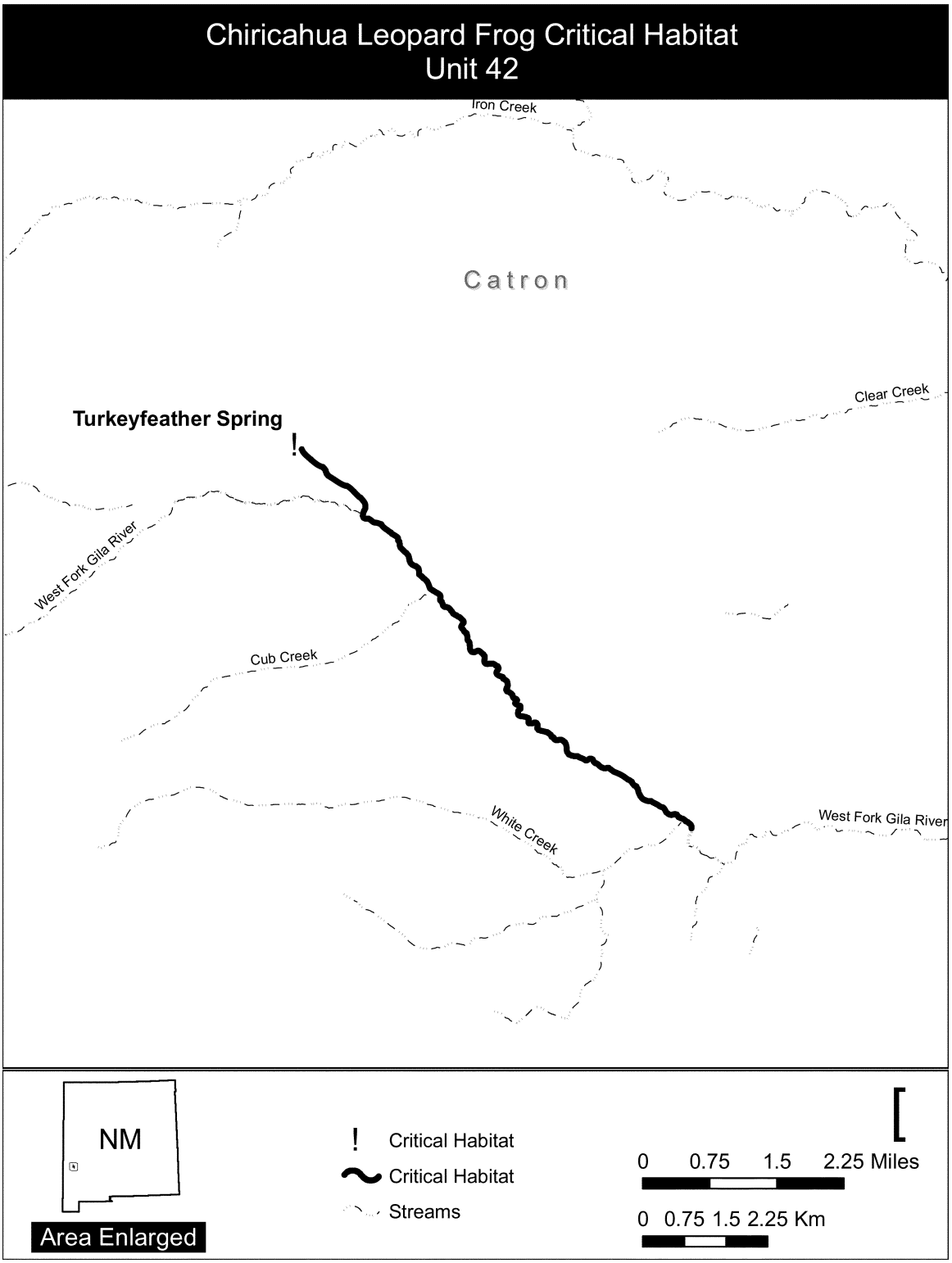
(ii) *Note:* Map of Unit 41, Kerr Canyon (Map 42), follows:



(47) Unit 42: West Fork Gila River, Catron County, New Mexico.

(i) From Turkeyfeather Spring (33.337486 N, 108.528607 W) downstream in Turkeyfeather Creek to its confluence with West Fork Gila River (33.32593 N, 108.517011 W); then downstream and southeast in West Fork Gila River to its confluence with White Creek (33.3274675 N, 108.4925 W), a distance of approximately 6.97 drainage miles (11.22 km).

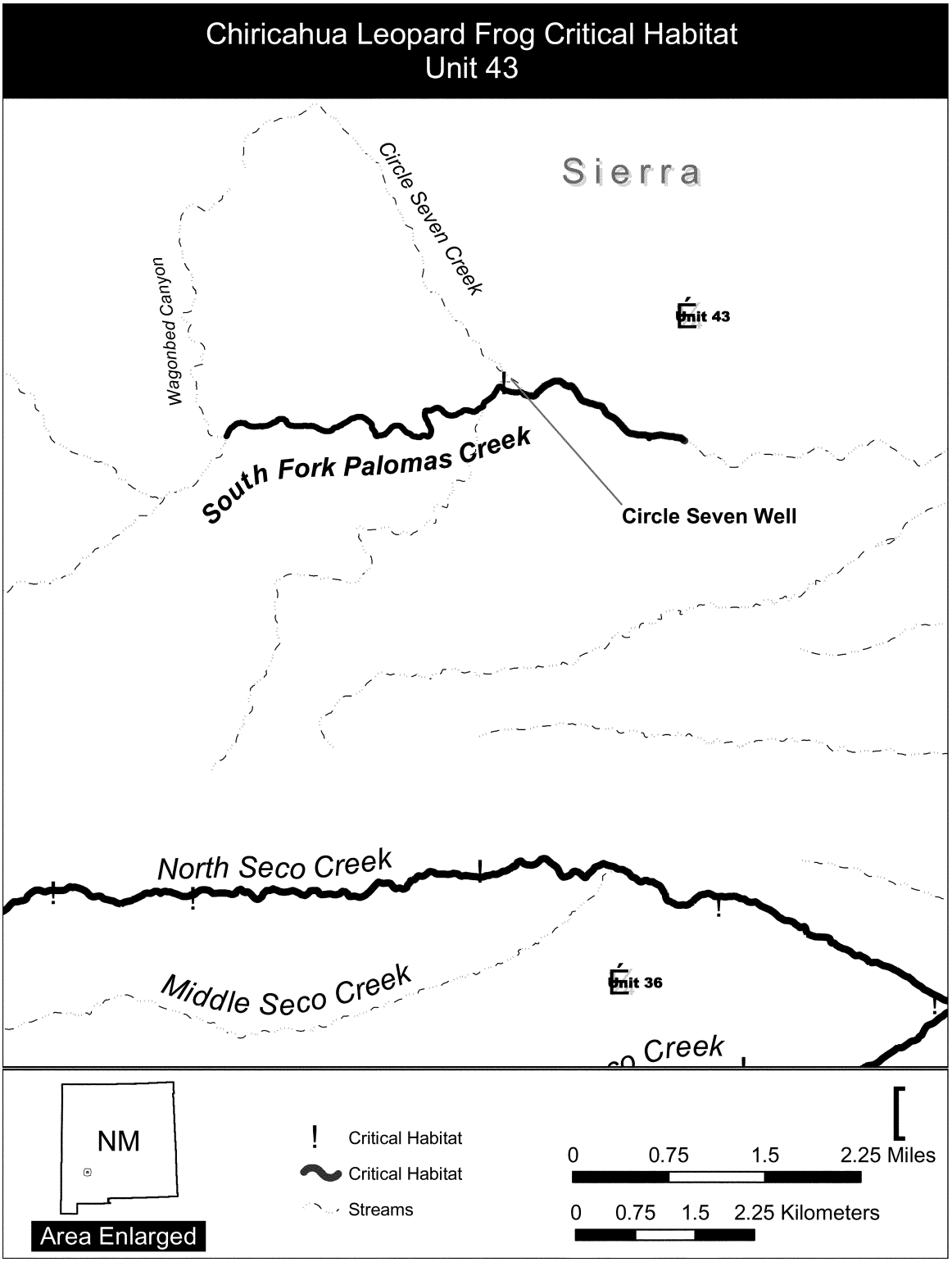
(ii) *Note:* Map of Unit 42, West Fork Gila River (Map 43), follows:



(48) Unit 43: South Fork Palomas Creek, Sierra County, New Mexico.

(i) From the confluence of an unnamed tributary in Wagonbed Canyon and South Fork Palomas Creek (33.164592 N, 107.723155 S), downstream in South Fork Palomas Creek to, but not including, Avilas Well (33.162567 N, 107.661564 S), and including a galvanized tank and a dirt tank at Circle Seven Well (33.169617 N, 107.684648 W) and an overland segment from Circle Seven Well (33.169617 N, 107.684648 W) to South Fork Palomas Creek (107.685045 N, 33.1688196 W), a distance of approximately 4.5 drainage miles (7.3 km) and 0.75 overland miles (1.21 km).

(ii) *Note:* Map of Unit 43, Palomas Creek (Map 44), follows:



* * * * *

Dated: September 12, 2011.

Rachel Jacobson,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24045 Filed 9–20–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–IA–2011–0027; 96300–1671–0000–R4]

RIN 1018–AW81

Endangered and Threatened Wildlife and Plants; U.S. Captive-Bred Inter-subspecific Crossed or Generic Tigers

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on the proposed rule to amend the regulations that implement the Endangered Species Act (Act) by removing inter-subspecific crossed or generic tigers (*i.e.*, specimens not identified or identifiable as members of the Bengal, Sumatran, Siberian, or Indochinese subspecies) from the list of species that are exempt from registration under the captive-bred wildlife regulations. We are extending the comment period by 30 days to allow all interested parties an opportunity to comment on the proposed rule.

DATES: We will consider comments received on or before October 21, 2011.

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R9–IA–2011–0027, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, check the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Send a Comment.''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–IA–2011–0027; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mails or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section at the end of **SUPPLEMENTARY INFORMATION** for further information about submitting comments).

FOR FURTHER INFORMATION CONTACT: Timothy J. Van Norman, Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 212, Arlington, VA 22203; telephone 703–358–21040; fax 703–358–2281. If you use a telecommunications devise for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 2011, we published a proposed rule (76 FR 52297) to amend the Captive-bred Wildlife (CBW) regulations that implement the Act by removing inter-subspecific crossed or generic tiger (*Panthera tigris*) (*i.e.*, specimens not identified or identifiable as members of Bengal, Sumatran, Siberian, or Indochinese subspecies (*Panthera tigris tigris, P. t. sumatrae, P. t. altaica*, and *P. t. corbetti*, respectively) from paragraph (g)(6) of 50 CFR 17.21. This action would eliminate the exemption from registering and reporting under the CBW regulations by persons who want to conduct otherwise-prohibited activities under the Act with live inter-subspecific crossed or generic tigers born in the United States. Inter-subspecific crossed or generic tigers remain listed as endangered under the Act, and a person would need to qualify for an exemption or obtain an authorization under the remaining statutory and regulatory requirements to conduct any prohibited activities.

The comment period was opened for 30 days from August 22, 2011, to September 21, 2011. We have received several requests to extend the comment period in order to give all interested parties an increased opportunity to fully research this issue and provide more substantial comments. Accordingly, we are extending the comment period by 30 days. Our August 22, 2011, proposed rule (79 FR 52297) specifies the information that we seek from the public. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

Public Comments

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your written comments, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service; Division of Management Authority; 4401 N. Fairfax Drive, Suite 212; Arlington, VA 22203; telephone, (703) 358–2093.

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.

Dated: September 15, 2011.

Rachel Jacobson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–24339 Filed 9–20–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 110819519–1560–01]

RIN 0648–BB22

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Grouper Management Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management actions described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). If