only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. The *Rate-of-Return Reform Order* replaced the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops. For the purposes of calculating and monitoring CAF–BLS, rate-of-return carriers that receive CAF–BLS must file common line and consumer broadband-only loop counts on FCC Form 507, forecasted common line and consumer broadband-only loop costs and revenues on FCC Form 508, and actual common line and consumer broadband-only loop costs and revenues on FCC Form 509. See 47 CFR 54.903(a).

In December 2018, the Commission adopted the *December 2018 Rate-of-Return Reform Order,* 84 FR 4711, February 19, 2019, to require rate-of-return carriers that receive Alternative Connect American Model (A–CAM) or Alaska Plan support to file line count data on FCC Form 507 as a condition of high-cost support. Historically, all rate-of-return carriers received CAF BLS or, prior to that, ICLS, and were required to file line count data on FCC Form 507 as a condition of that support. In recent years, some rate-of-return carriers have elected to receive A–CAM I, A–CAM II, or Alaska Plan instead, and those carriers were not required to file line count data because the requirement to file applied only to rate-of-return carriers receiving CAF BLS. In order to restore a data set that the Commission relied on to evaluate the effectiveness of its high-cost universal service programs, the Commission revised its rules in that Order to require all rate-of-return carriers to file that data. While carriers receiving CAF–BLS must file the line count data on March 31 for line counts as of the prior December 31, the A–CAM I, A–CAM II, and Alaska Plan carriers will be required to file on July 1 of each year to coincide with other existing requirements in OMB Control No. 3060–0986. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking and Order on Reconsideration, 33 FCC Rcd 11893 (2018) (*2018 Rate-of-Return Reform Order*). *See also* 47 CFR 54.313(f)(5).

The Commission therefore revises this information collection. We also increased the burdens associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–14078 Filed 6–29–20; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2020–0030; FF09E21000 FXES11110900000 201]

RIN 1018–BE85

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Elfin-Woods Warbler

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the elfin-woods warbler (*Setophaga angelae*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 27,488 acres (11,125 hectares) in the Maricao, San Germán, Sabana Grande, Yauco, Río Grande, Canóvanas, Las Piedras, Naguabo, Ceiba, Cayey, San Lorenzo, Guayama, and Patillas municipalities in Puerto Rico fall within the boundaries of the critical habitat designation. The effect of this regulation is to extend the Act's protections to the elfin-woods warbler's critical habitat.

DATES: This rule is effective on July 30, 2020.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.* Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.* Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Service website and in the preamble at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Marelisa Rivera, Deputy Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, P.O. Box 491, Road 301 km 5.1, Boquerón, PR 00622; telephone 787–851–7297. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that any species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published in the **Federal Register** a final rule to list the elfin-woods warbler as a threatened species on June 22, 2016 (81 FR 40534). On that same day, we also published a proposed rule to designate critical habitat for the elfin-woods warbler (81 FR 40632). Designations of critical habitat can only be completed by issuing a rule.

What this rule does. This rule will finalize the designation of critical habitat for the elfin-woods warbler under the Act. Accordingly, this rule revises part 17 of title 50 of the Code of Federal Regulations at 50 CFR 17.95.

Basis for this rule. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential

for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species, as interpreted by regulation at 50 CFR 424.12. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

The critical habitat we are designating in this rule, in three units comprising 27,488 acres (ac) (11,125 hectares (ha)), constitutes our current best assessment of the areas that meet the definition of critical habitat for the elfin-woods warbler.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat. We published this announcement and solicited public comments on the draft economic analysis (81 FR 40632; June 22, 2016).

Peer review and public comment. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of actions under the Act, we sought the expert opinions of six independent specialists with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. The purpose of peer review is to ensure that our designation is based on scientifically sound data and analyses. We received responses from two peer reviewers on our technical assumptions, analysis, and whether or not we used the best scientific data available. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final designation of critical habitat. We also considered all comments and information received from the public during the comment period for the proposed designation of critical habitat.

Previous Federal Actions

All previous Federal actions are described in the proposed and final listing rules for the elfin-woods warbler as a threatened species under the Act published on September 30, 2015 (80 FR 58674) and June 22, 2016 (81 FR 40534). Concurrently with the final listing rule, we adopted a rule under section 4(d) of the Act to provide for the conservation of the elfin-woods warbler. We published our proposed rule to designate critical habitat for the elfin-woods warbler on June 22, 2016 (81 FR 40632).

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated in that rule, the amendments it sets forth apply to ''rules for which a proposed rule was published after September 26, 2019.'' We published our proposed critical habitat designation for the elfin-woods warbler on June 22, 2016 (81 FR 40534); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the elfin-woods warbler. Nonetheless, we note that this designation is also consistent with the standards set forth in the August 27, 2019 amendments to the regulations.

Summary of Comments and Recommendations

In the June 22, 2016, proposed critical habitat rule (81 FR 40632), we requested that all interested parties submit written comments on the proposed designation of critical habitat for the elfin-woods warbler by August 22, 2016. We also contacted appropriate Federal, State, and local agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule and draft economic analysis (DEA). A newspaper notice inviting general public comment was published in Primera Hora on June 24, 2016. We did not receive any requests for a public hearing, and we did not receive any comments on the DEA.

During the comment period, we received two comment letters from peer reviewers directly addressing the proposed critical habitat designation and one public comment. All substantive information provided during the comment period has either been incorporated directly into this final determination or addressed below, as appropriate.

Peer Reviewer Comments

(1) *Comment:* A peer reviewer recommended adding the westernmost patches of forest within the boundaries of the Maricao Commonwealth Forest (MCF) as critical habitat for the elfin-woods warbler. According to the reviewer, these forest patches qualify as essential habitat for the conservation of the species for breeding, reproduction, or rearing of offspring. The reviewer also reported two observations of elfin-woods warbler in those patches.

Our Response: We reviewed the westernmost boundaries of Unit 1 (Maricao) of the proposed critical habitat and the new data documenting the species' occurrence in the area. Based on the reanalysis of the area and the data provided by the peer reviewer, we revised Unit 1 to add approximately 363 ac (146 ha). This additional area comprises 2.8 percent of Unit 1. The Puerto Rico Department of Natural and Environmental Resources (PDNER) manages 97.8 percent of the additional area, in the MCF, with the remaining 2.2 percent (8 ac) of the additional area on private land.

(2) *Comment:* A peer reviewer recommended we expand the Maricao Unit because they believed habitat with physical and biological features on private lands outside the western boundary of the MCF was left out of the critical habitat designation. The reviewer recommended designating active and abandoned shade-grown coffee plantations, agricultural lands with native forest cover, and closed canopies that exist in the mountainsides parallel to road PR#105 up to km 12.4, as critical habitat. The reviewer stated that this area encompasses suitable habitat consistently used and occupied by the elfin-woods warbler.

Our Response: We reanalyzed the lands adjacent to the western boundary of the MCF. As described in our response to comment 1, we identified an additional 8 ac (3.2 ha) of private land adjacent to the MCF that is occupied and contains the physical and biological features required by the elfin-woods warbler that we are including as critical habitat. We determined the remainder of these private areas suggested by the peer reviewer are disturbed and do not fit our established criteria for critical habitat at this time (see *Criteria Used To Identify Critical Habitat*). Because these areas are occupied, the species is protected in these areas. For example, where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. Additionally, the prohibitions of section 9 of the Act apply to the elfin-woods warblers that occur within these areas.

(3) *Comment:* A peer reviewer recommended we include Guilarte Commonwealth Forest as another area outside the geographic range of the

elfin-woods warbler at the time of listing to be included as critical habitat, based on the potential of this forest to provide connectivity between occupied sites for genetic exchange and because it contains the necessary habitat to support the species.

Our Response: Based on the best available information at this time, we do not consider the Guilarte Commonwealth Forest (GCF) essential to the conservation of the species. The elfin-woods warbler has never been observed in the GCF, indicating the GCF may not be essential habitat for the species. In addition, occupancy of resilient populations of the elfin-woods warbler in the three areas that constitute its known historical range, which we are designating as critical habitat, would likely be sufficient to ensure conservation of the species. A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be beneficial for the recovery of the species. The Service can develop recovery actions during recovery planning for this site. We will continue working with our State partners to address the conservation needs of the elfin-woods warbler.

Comments From States

Section 4(b)(5)(A)(ii) of the Act requires the Service to give actual notice of any designation of lands that are considered to be critical habitat to the appropriate agency of each State in which the species is believed to occur, and invite each such agency to comment on the proposed regulation. Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' For this rule we did not receive any written comments from the Commonwealth of Puerto Rico.

Public Comments

We received one public comment on the proposed rule. While the commenter indicated support for the habitat protection of the elfin-woods warbler, the commenter did not provide substantive comments requiring the Service's response.

Summary of Changes From Proposed Rule

This final rule incorporates changes to our proposed rule based on the comments and information we received, as discussed above in the Summary of Comments and Recommendations. All changes made were included accordingly into the document, tables, and maps. As a result, the final designation of critical habitat reflects the following changes from the June 22, 2016, proposed rule (81 FR 40632):

1. We revised Unit 1 (Maricao) to include additional area as critical habitat. This unit now consists of approximately 12,978 ac (5,252 ha), which is an increase of approximately 2.8 percent of the proposed area for Unit 1.

2. We corrected an error in the acreage of Unit 3 (Carite). The error resulted from rounding of numbers (rounding up from 0.55), and the change was an increase of approximately 1.1 ac (0.45 ha).

3. We refined our description of the physical and biological features to be more explicit about the features we are identifying, specifying these features include elevations above 300 meters in active shade-grown coffee plantations or forested agricultural lands dominated primarily by native vegetation, or abandoned coffee plantations or agricultural lands with native forest cover and a closed canopy. In the proposed rule, we did not specify the elevations in these landscapes. No adjustments to the unit boundaries were needed as a result of this change.

4. We updated the coordinates or plot points from which the maps were generated. The information is available at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030, and from the Caribbean Ecological Services Field Office website at *http://www.fws.gov/caribbean.*

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as: An area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical

habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

For the elfin-woods warbler, we determined whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. Our decision was further informed by observations of species-habitat relationships, habitat suitability models derived from these observations, and the locations of historical records to identify which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species, the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The elfin-woods warbler is an endemic Puerto Rican bird with a very limited distribution. It is typically observed in forested habitats with closed canopy and well-developed understory in higher elevations. Based on the best available information, there are only two known elfin-woods warbler populations, one each in eastern and western Puerto Rico.

The eastern population occurs at El Yunque National Forest (EYNF) located within the Sierra de Luquillo mountains. The species' primary habitat in EYNF consists of the dwarf forest (Kepler and Parkes 1972, pp. 3–5) and the Palo Colorado forest (Wiley and Bauer 1985, pp. 12–18). The dwarf forest falls within the lower montane rain forest life zone (Ewel and Whitmore 1973, p. 49). It is found on exposed peaks with short, stunted vegetation above 900 meters (m) (2,952 feet (ft)) in elevation (Weaver 2012, p. 58). The

dwarf forest is characterized by a single story of trees that range from 1 to 6 m (3 to 19 ft) in height, depending on exposure (Weaver 2012, p. 58). However, trees located on rocky summits are limited to 2 to 3 m (6 to 10 ft) in height. Although no tree species is confined to this type of forest, only a few species, such as *Podocarpus coriaceus* (no common name, referred to as ''Podocarpus''), *Ocotea spathulata* (nemocá), and *Ilex sintenisii* (no common name), are adapted to survive on the exposed summits of this forest (Weaver 2012, p. 58). The dwarf forest is also characterized by the abundance of mosses, epiphytes, and liverworts that cover the majority of the forest surface (Lugo 2005, p. 514).

The Palo Colorado forest occurs on gentle slopes within the lower montane wet and lower montane rain forest life zones, approximately between 600 and 900 m (1,968 and 2,952 ft) in elevation (Weaver 2012, p. 1; U.S. Forest Service (USFS) no date). This forest type mainly consists of fast-growing trees with heights not exceeding more than 24 m (78 ft) (Lugo 2005, p. 506). This forest type is essentially an upland swamp of short-statured trees with shallow root systems (USFS, no date). Some of the most common tree species are *Cyrilla racemiflora* (Palo Colorado), *Prestoea montana* (Sierra palm), *Ocotea spathulata,* and *Croton poecilanthus* (sabinón) (Weaver 2012, p. 55). The understory of the Palo Colorado forest is dominated by grasses, bromeliads, ferns, and sedges (Lugo 2005, p. 508).

The western population of the elfin-woods warbler is located within the MCF and adjacent agricultural lands. The MCF is located within the Cordillera Central (central mountain range) of Puerto Rico. The primary habitat of the western population consists of Podocarpus forest, exposed ridge woodland, and timber plantation forests (González 2008, pp. 15–16). The Podocarpus forest is located on the slopes and highest peaks (600 to 900 m (1,968 to 2,952 ft)) within the lower montane wet forest life zone (DNR 1976, p. 185; Ewel and Whitmore 1973, p. 41). At the MCF, this type of forest grows on deep serpentine soils and is dominated by *Podocarpus coriaceus* trees; a continuous closed canopy of approximately 20 m (66 ft) of height; and a well-developed understory composed of tree ferns (*Cyathea* spp.), Sierra palm, and vines (Tossas and Delannoy 2001, pp. 47–53; Anadón-Irizarry 2006, p. 53; González 2008, pp. 15–16). The exposed ridge woodland forest is found in valleys, slopes, and shallow soils with a more or less continuous canopy (González 2008, pp. 15–16). These forest associations are found at elevations ranging from 550 to 750 m (1,804 to 2,460 ft) within the subtropical wet forest life zone (DNR 1976, p. 185; Ricart-Pujals and Padrón-Vélez 2010, p. 9). The timber plantation forest is found in elevations ranging from 630 to 850 m (2,066 to 2,788 ft) within the subtropical wet forest and the subtropical moist forest life zones (DNR 1976, p. 185). Habitat in this forest is predominantly *Calophyllum calaba* (María trees), *Eucalyptus robusta* (eucalyptus), and *Pinus caribaea* (Honduran pine) planted in areas that were deforested for agriculture (Delannoy 2007, p. 9; González 2008, p. 5).

In the privately owned lands adjacent to the MCF, the species has been reported mainly within secondary forests (both young and mature secondary forests) and shade-grown coffee plantations (González 2008, pp. 15–16). The young secondary forests are less than 25 years old with a mostly open canopy approximately 12 to 15 m (40 to 50 ft) in height (González 2008, p. 6). These forests are found within the subtropical moist and subtropical wet forest life zones at elevations ranging from 300 to 750 m (984 to 2,460 ft) (González 2008, p. 59; Puerto Rico Planning Board 2015, no page number), and cover approximately 98 percent of the MCF (DNR 1976, p. 185). The understory is well developed and dominated by grasses, vines, and other early successional species (González 2008, p. 6). Mature secondary forests are over 25 years old, developing in humid and very humid, moderate to steep slopes. These forests are characterized by a closed canopy of approximately 20 to 30 m (66 to 100 ft) in height and sparse to abundant understory (González 2008, p. 6). The shade-grown coffee plantations are covered with tall mature trees, dominated mostly by *Inga vera* (guaba), *Inga laurina* (guamá), *Andira inermis* (moca), and *Guarea guidonia* (guaraguao) trees, reaching 15 to 20 m (50 to 66 ft) in height, with an open understory without grasses (González 2008, p. 6). Located adjacent to the MCF at elevations between 300 and 600 m (984 and 1,968 ft), these shade-grown coffee plantations extend the vegetation cover and provide habitat for the species (González 2008, p. 59).

According to the habitat suitability model developed for the species, all the habitats described above occur within the intermediate to very high adequacy category (Colón-Merced 2013, p. 57). This model is based on a combination of elevation and vegetation cover in areas where the species is known to occur. In addition, the species appears to be associated with high elevations and is seldom observed in elevations lower than 300 m (984 ft). The habitat types identified above are the only habitats that the species is known to occupy and use for normal behavior that support its life-history processes. Thus, protection and maintenance of these forested habitat features are essential for rearing, growth, foraging, migration, and other normal behaviors of the species.

Limited information is available concerning the elfin-woods warbler's breeding, reproduction, and offspring development. However, based on the best available information, shaded and forested corridors are features that are essential to breeding, reproduction, and rearing. The elfin-woods warbler's breeding occurs between March and June (Raffaele et al. 1998, p. 406). Clutch size is usually two to three eggs, but there have been observations of nests that contain broods of up to four nestlings (Raffaele et al. 1998, p. 406; Rodríguez-Mojica 2004, p. 22). The species' nest is described as a compact cup, usually close to the trunk and well hidden among epiphytes of small trees (Raffaele et al. 1998, p. 406). The first elfin-woods warbler nest was found in 1985 at EYNF (Arroyo-Vázquez 1992, p. 362), and later, two nests were found in the MCF area (Arryo-Vázquez 1992, p. 362). Both nests in the MCF were in Podocarpus forest, placed in trees among dry leaf litter trapped in vegetation or vines at heights between 1.3 and 7.6 m (4.3 and 25.0 ft) (Arroyo-Vázquez 1992, pp. 362–364). In 2004, the first nesting event in a cavity of a rotten *Cyrilla racemiflora* stump in the MCF area was reported (Rodríguez-Mojica 2004, p. 22). The nest was placed about 7 m (23 ft) above ground and 6 centimeters (cm) (2 inches (in)) deep from the lower border of the irregular rim of the stump. No other warbler species in Puerto Rico have been reported using such a nesting site (Rodríguez-Mojica 2004, p. 23).

Based on the available information describing the habitat used by the elfin-woods warbler, we identified the dwarf, Palo Colorado, *Podocarpus,* exposed ridge woodland, and timber plantation forests and forest associations (shaded and forested corridors); secondary forests; and shade-grown coffee plantations. These habitats contain physical or biological features that are essential to the conservation of the elfin-woods warbler because they provide space for population growth and normal behavior; cover and shelter; and sites for breeding, rearing, and development of offspring.

Summary of Essential Physical or Biological Features

We derived the specific physical or biological features (PBFs) essential to the conservation of the elfin-woods warbler from studies of this species' habitat, ecology, and life history as described above. Additional information can be found in the final listing rule published in the **Federal Register** on June 22, 2016 (81 FR 45035), and in our proposed critical habitat designation, which also published in the **Federal Register** on June 22, 2016 (81 FR 40632). We have determined that the following PBFs are essential to the conservation of elfin-woods warbler:

1. Wet and rain montane forest types:

a. *Podocarpus* forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

b. Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

c. Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

2. Forested habitat areas that contain:

a. Active shade-grown coffee plantations or forested agricultural lands that are above 300 m in elevation and are dominated primarily by native vegetation; or

b. Abandoned coffee plantations or agricultural lands (*i.e.,* agricultural practices were discontinued) with native forest cover and a closed canopy found above 300 m in elevation.

3. Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in PBF 1 or PBF 2:

a. Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

b. Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

c. Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and may require special management considerations or protection.

The Maricao unit contains privately owned agricultural lands in which various activities may affect one or more of the PBFs. The features of this unit essential to the conservation of the elfin-woods warbler may require special management considerations or protection to reduce the following threats: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires. The features of the El Yunque unit may require special management considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change.

Management activities that could ameliorate these threats or potential threats include but are not limited to the following: The 2014 candidate conservation agreement (CCA) signed by the Service, U.S. Forest Service, and Puerto Rico Department of Natural and Environmental Resources (PRDNER) to implement conservation practices for the benefit of the elfin-woods warbler and its habitat in EYNF and MCF (USFWS 2014); implementation of conservation agreements with private landowners to restore habitat and minimize habitat disturbance and fragmentation; and development and implementation of management plans for other protected lands where the species is found.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

Because of the vulnerability associated with small populations, limited distributions, or both (as described in the final listing rule), conservation of the elfin-woods warbler requires protection of both existing occupied habitat and potential habitat (*i.e.,* suitable for occupancy but currently unoccupied), and the establishment of new populations to reduce or eliminate such vulnerability. In this case, we considered potential habitat to be historically occupied areas that currently possess the PBFs suitable for elfin-woods warbler recolonization and subsequent persistence. Therefore, for the elfin-woods warbler, in addition to areas occupied by the species at the time of listing, we are designating habitat outside the geographical area occupied by the species at the time of listing (Unit 3, Carite), which was historically occupied but is presently unoccupied, because it is essential for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Sources of data for this critical habitat designation include reports on assessments and surveys throughout the species' range, peer-reviewed scientific and academic literature, habitat suitability models, personal communications with the species experts (*e.g.,* Colón-Merced 2013; González 2008; Anadón-Irizarry 2006; Delannoy 2007; Arroyo-Vázquez 1992; Pérez-Rivera 2014, pers. comm.); and information from Service biologists. Other sources include databases maintained by Commonwealth and Federal agencies regarding Puerto Rico (such as elevation data, land cover data, aerial imagery, protected areas, and U.S. Geological Survey (USGS) topographic maps). Critical habitat units were then mapped using ArcMap version 10 (Environmental Systems Research Institute, Inc.), a geographic information system (GIS) program.

To further refine the critical habitat boundaries, we used an existing elfin-woods warbler habitat suitability model (Colón-Merced 2013, p. 51). This model uses variables such as elevation and vegetation cover to predict suitable habitat for this species in Puerto Rico (Colón-Merced 2013, p. 45). This model has been validated in several locations in Puerto Rico (Anadón-Irizarry 2017, pp. 7–10; Anadón-Irizarry et al. 2017, entire).

In order to identify essential features within private lands adjacent to the MCF, we established a buffer zone of 500 m (0.31 mile (mi)) from the boundary line of the MCF to include forested areas in abandoned and active shade-grown coffee plantations where the elfin-woods warbler has been reported on the north, east, and west sides of the forest (González 2008, p. 59). We used 500 m (0.31 mi) as our buffer zone, because our best understanding of the available information (*e.g.,* spatial data and on-

the-ground data) is that this area encompasses suitable habitat that supports the conservation of the elfin-woods warbler.

Areas Occupied at the Time of Listing

The final critical habitat designation focuses on occupied forested areas within the species' historical range containing the PBFs that will allow for the maintenance and expansion of existing populations and for possible new populations. Two locations meet the definition of geographic areas occupied by the species at the time of listing: (1) EYNF, and (2) MCF and adjacent private lands to the north, east, and west.

Areas Outside the Geographical Area Occupied at the Time of Listing

To consider for designation areas not occupied by the species at the time of the listing, we must demonstrate that these areas are essential for the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species. To determine if these areas are essential for the conservation of the elfin-woods warbler, we considered the life history, status, habitat elements, and conservation needs of the species such as:

(1) The importance of the area to the overall status of the species to prevent extinction and contribute to the species' conservation;

(2) Whether the area contains the necessary habitat to support the species;

(3) Whether the area provides connectivity between occupied sites for genetic exchange; and

(4) Whether a population of the species could be reestablished in the area.

The Carite Commonwealth Forest (CCF) is within the historical range of the elfin-woods warbler, within the Sierra de Cayey mountains in southeast Puerto Rico (Silander et al. 1986, p. 178); the Sierra de Cayey mountains are connected to the Cordillera Central mountains, which extend from Aibonito in the east to Maricao in the west of Puerto Rico (Monroe 1980, p. 16). However, the species has not been reported in CCF since 2000 (Anadón-Irizarry 2006, p. 34; Pérez-Rivera 2014, pers. comm.; Aide and Campos 2016, entire).

The CCF has been managed for conservation by the PRDNER since 1975 (previously Department of Natural Resources (DNR); DNR 1976, p. 169). This forest covers about 6,660 ac (2,695 ha), and ranges between 820 and 2,962 ft (250 and 903 m) in elevation (DNR 1976, p. 168). The mean annual precipitation is 225 cm (88.5 in), and the mean temperature is 72.3 degrees Fahrenheit (°F) (22.7 degrees Celsius (°C)) (DNR 1976, p. 169; Silander et al. 1986, p. 183).

The CCF contains the following forest types, which contain the PBFs for the elfin-woods warbler: Dwarf forest, Palo Colorado forest, timber plantation forest, and secondary forests. These are the same forest types used by the elfin-woods warbler in EYNF and MCF and are located within the same life zones in CCF as they are in EYNF and MCF (Ewel and Whitmore 1973, p. 74).

Although studies conducted by Anadón-Irizarry (2006, 2014) between 2003–2004 and 2012–2013 failed to detect the species within the CCF, she suggested the possibility that the species may still be present in isolated pockets of forest that were not searched during those studies. The elfin-woods warbler may be difficult to detect owing to its persistent and relatively sedentary behavior and because it has an affinity for certain small and isolated pockets of forest (Anadón-Irizarry 2006, p. 54; Delannoy 2007, pp. 22–23; Pérez-Rivera 2014, pers. comm.). However, surveys contracted by the Service and conducted between March and April 2016 did not detect the species within the CCF and adjacent private lands (Aide and Campos 2016, entire). In any case, the CCF contains habitat that is likely suitable for the elfin-woods warbler due to its similarity in elevation, climatic conditions, and vegetation associations with EYNF and MCF (Colón-Merced 2013, p. 57). This area contains habitat with ''intermediate to very high adequacy'' (favorable to optimal combination of elevation and vegetation cover in the known elfin-woods warbler habitat) according to the habitat suitability model for the species (Colón-Merced 2013, p. 57).

The CCF provides the necessary habitat to support the elfin-woods warbler in the easternmost part of the Cordillera Central. The presence of suitable habitat characteristics and historic occurrence of the species within the CCF increases the opportunity for future reestablishment of a population of elfin-woods warblers in this forest. In addition, the connectivity between MCF and CCF through the Cordillera Central is expected to result in genetic exchange between the existing MCF populations and CCF populations that may be reestablished in the future. While there is connectivity between MCF and CCF, the EYNF is within the Sierra de Luquillo mountains with lower elevation and development between the mountain ranges that significantly reduces connectivity between CCF and EYNF. For the above-mentioned reasons, we conclude that suitable habitat within the CCF meets the four considerations described above, and is therefore essential for the conservation of the elfin-woods warbler.

General Information on the Maps of the Critical Habitat Designation

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for elfin-woods warbler. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are designating as critical habitat in areas that we have determined were occupied at the time of listing in 2016 and contain physical or biological features to support life-history processes essential to the conservation of the species. We are also designating specific areas within one unit outside of the geographical area occupied by the species at the time of listing, which were historically occupied but are presently unoccupied, because we have determined that such areas are essential for the conservation of elfin-woods warbler and that the area contains one or more of those physical or biological features essential to the conservation of the warbler.

All units were designated based on one or more of the elements of physical or biological features being present to support elfin-woods warbler's life processes. Some units contained all of the identified elements of physical or biological features and supported multiple life processes. Some units contained only some elements of the physical or biological features necessary to support the elfin-woods warbler's particular use of that habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Regulation

Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and at *http://www.fws.gov/caribbean.*

Final Critical Habitat Designation

We are designating approximately 27,488 acres (11,125 hectares) in three units as critical habitat for elfin-woods warbler. The critical habitat areas described below constitute our best assessment of areas that meet the definition of critical habitat for the elfin-woods warbler. Those three units are: (1) Maricao, (2) El Yunque, and (3) Carite. Table 1 shows the name, occupancy of the unit, municipality, land ownership, and approximate area of the designated critical habitat units for the elfin-woods warbler.

TABLE 1—LOCATION, OCCUPANCY STATUS, OWNERSHIP, AND SIZE OF ELFIN-WOODS WARBLER CRITICAL HABITAT UNITS

Unit	Occupied	Municipality	Land ownership in acres (hectares)			Total area in acres (hectares)
			Federal	Commonwealth	Private	
1: Maricao	Yes	Maricao, San German, Sabana Grande, Yauco.	0	8,861 (3,586)	4,117 (1,666)	12,978 (5,252)
2: El Yunque	Yes	Río Grande, Canovanas, Las Piedras, Naguabo, Ceiba.	11,430 (4,626)	0	0	11,430 (4,626)
3: Carite	No	Cayey, San Lorenzo, Guayama, Patillas.	0	3,080 (1,247)	0	3,080 (1,247)
Totals			11,430 (4,626)	11,941 (4,833)	4,117 (1,666)	27,488 (11,125)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for elfin-woods warbler, below.

Unit 1: Maricao

Unit 1 consists of 12,978 ac (5,252 ha). Approximately 8,861 ac (3,586 ha) are owned by the Commonwealth and managed by the PRDNER, and 4,117 ac (1,666 ha) are in private ownership. This unit is located within the municipalities of Maricao, San Germán, Sabana Grande, and Yauco and encompasses the majority of the Maricao Commonwealth Forest. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 65 miles (mi) (105 kilometers (km)) west of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing. This unit contains all the PBFs and a core population of the species, and will likely contribute to range expansion of the elfin-woods warbler by serving as a source of birds to found elfin-woods warbler populations in Carite, which is currently unoccupied but contains the PBFs.

The PBFs in this unit may require special considerations or protection to address the following threats or potential threats that may result in changes in the composition or abundance of vegetation within this unit: Loss, fragmentation, and degradation of habitat due to unsustainable agricultural practices; hurricanes; and human-induced fires.

Unit 2: El Yunque

Unit 2 consists of 11,430 ac (4,626 ha) of federally owned land managed by the U.S. Forest Service (EYNF). It is located within the municipalities of Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba. The unit is located east of State Road PR–186, north of State Road PR–31, and approximately 15 mi (24 km) east of the International Airport Luis Muñoz Marin. This unit is within the geographical area occupied by the elfin-woods warbler at the time of listing and contains PBFs 1(b) and 1(c) (see Physical or Biological Features Essential to the Conservation of the Species, above). This unit represents a core population of the species and helps to maintain the elfin-woods warbler's geographical range.

The PBFs in this unit may require special considerations or protection to reduce threats or potential threats from hurricanes and human-induced fires, which may be exacerbated by the effects of climate change.

Unit 3: Carite

Unit 3 consists of 3,080 ac (1,247 ha) of lands owned by the Commonwealth and managed by the PRDNER. It is located within the municipalities of Cayey, San Lorenzo, Guayama, and Patillas. The unit is located within the CCF west of State Road PR–7740 and State Road PR–184 that runs within the CCF, and approximately 23 mi (37 km) south of the International Airport Luis Muñoz Marin. This unit was not occupied by the elfin-woods warbler at the time of listing and is considered to be essential for the conservation of the species. As discussed above (see Criteria Used to Identify Critical Habitat), this unit currently has the habitat features, including all of the PBFs, to support the elfin-woods warbler. Therefore, this unit provides an opportunity for expansion of the species' documented current range into an area that was previously occupied; this potential expansion will help to increase the redundancy and resiliency of the species. Therefore, we conclude that this unit is essential for the conservation of the elfin-woods warbler.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat

as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter the structure and function of active shade-grown coffee plantations, abandoned coffee plantations, and/or agricultural lands with native forest cover and a closed canopy. These actions or activities may include, but are not limited to, deforestation, conversion of shade-grown coffee to sun-grown coffee plantations, and unsustainable agricultural practices (*i.e.,* agricultural and silvicultural practices other than sun-to-shade-grown coffee conversion, and herbicide and pesticide use outside coffee plantations). These actions could degrade the habitat used by the elfin-woods warbler for feeding, reproducing, and sheltering.

(2) Actions that would significantly alter the vegetation structure in and around the *Podocarpus,* dwarf, or Palo Colorado forests and forest associations. These actions or activities may include, but are not limited to, habitat modification (*e.g.,* deforestation, fragmentation, loss, introduction of nonnative species, expansion or construction of communication facilities, expansion of recreational facilities, pipeline construction, bridge construction, road rehabilitation and maintenance, habitat management), Federal and State trust species reintroductions, trail maintenance, camping area maintenance, research, repair and restoration of landslides, and any other activities that are not conducted in accordance with the consultation and planning requirements for listed species under section 7 of the Act. These activities could alter the habitat structure essential to the elfin-woods warbler and may create suitable conditions for other species that compete with or prey upon the elfin-woods warbler or displace the species from its habitat.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation.

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after

taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the elfin-woods warbler (Abt Associates, Inc. 2016). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and thus may require additional management or conservation efforts as a result of the critical habitat designation for the species; these additional efforts may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis (DEA) of the proposed critical habitat designation for the elfin-woods warbler; our DEA is summarized in the narrative below. The DEA, dated March 7, 2016, was made available for public review from June 23, 2016, through August 22, 2016 (81 FR 40632). We did not receive any public comments on the DEA. A copy of the DEA may be obtained by contacting the Caribbean Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov.*

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the elfin-woods warbler, first we identified, in the IEM dated December 7, 2015, probable incremental economic impacts associated with the following categories of activities: Forest management, silviculture/timber management, implementation of conservation/restoration practices, human-induced fire management, development or improvement of existing infrastructure (*e.g.,* roads, water intakes, water pipelines, electric transmission lines), recreation facilities, agriculture, and single house development funded by the U.S. Department of Housing and Urban Development (HUD). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the elfin-woods warbler is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. When this final critical habitat designation rule becomes

effective, consultations to avoid the destruction or adverse modification of critical habitat will be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the elfin-woods warbler's critical habitat. Because the majority of the critical habitat units are already managed for the conservation of natural resources, all units have co-occurring federally listed species, and two of the three units are occupied by the elfin-woods warbler, it is unlikely that costs will result from section 7 consultations considering critical habitat alone, consultations resulting in adverse modifications alone, or project modifications attributable to critical habitat alone. The only incremental costs predicted are the administrative costs due to additional consideration of adverse modification of critical habitat during section 7 consultations.

Based on estimates from existing section 7 consultations on a surrogate listed species, the Puerto Rican sharp-shinned hawk, the DEA predicts that 5.4 requests for technical assistance, 2.4 informal consultations, and 0.6 formal consultations per year will consider critical habitat for the elfin-woods warbler. The 363 ac (146.9 ha) we are including in Unit 1 of our critical habitat designation, after the proposed designation and DEA were complete, does not significantly alter the economic predictions. Within this 363 ac, there have been no consultations and one species list request in the past 5 years.

In addition, because there are other federally listed species in all units of the critical habitat for elfin-woods warbler, the Service finds that the designation of critical habitat for the elfin-woods warbler is unlikely to lead to changes in permitting processes by Commonwealth or local agencies or other land managers.

We note that ''any project modifications or conservation measures recommended to prevent adverse modification of the elfin-woods warbler's critical habitat will not differ from project modifications and conservation measures recommended to prevent the jeopardy of other federally listed co-occurring species in the area (*e.g.,* Puerto Rican sharp-shinned hawk)'' (Abt Associates, Incorporated 2016, p. 11). Federally listed species occupy areas in the three critical habitat units for the elfin-woods warbler. Therefore, we do not expect substantial impacts within any geographic area or to any sector as a result of this critical habitat designation.

Based on peer review comments that identified an area that is occupied by the species and has the PBFs that support the species, we added 363 ac (146.9 ha) to proposed critical habitat in Unit 1 (Maricao). This added area consists of 355 ac within lands managed for conservation by the Puerto Rico Department of Natural and Environmental Resources, with the remaining 8 ac privately owned. The incremental economic effects of this addition are minimal, because the area being added is 1.3 percent of the total critical habitat, predominantly contains lands managed for conservation, and harbors federally listed species covered under section 7 of the Act.

Based on the finding that the critical habitat designation will have minimal impact on land use or other activities (*i.e.,* there is little incremental difference due to the designation), the DEA concludes that benefits will also be minimal. Possible benefits, aside from the conservation of elfin-woods warbler, could include cultural heritage benefits and other non-use benefits. Due to limited data availability, however, the DEA does not monetize these benefits.

Exclusions Based on Economic Impacts

The first sentence of section 4(b)(2) of the Act requires the Service to consider the economic impacts (as well as the impacts on national security and any other relevant impacts) of designating critical habitat. In addition, economic impacts may, for some particular areas, play an important role in the discretionary section 4(b)(2) exclusion analysis under the second sentence of section 4(b)(2). In both contexts, the Service has considered the probable incremental economic impacts of the designation. When the Service undertakes a discretionary section 4(b)(2) exclusion analysis with respect to a particular area, we weigh the economic benefits of exclusion (and any other benefits of exclusion) against any benefits of inclusion (primarily the conservation value of designating the area). The conservation value may be influenced by the level of effort needed to manage degraded habitat to the point where it could support the listed species.

The Service uses its discretion in determining how to weigh probable incremental economic impacts against conservation value. The nature of the probable incremental economic impacts, and not necessarily a particular threshold level, triggers considerations of exclusions based on probable incremental economic impacts. For example, if an economic analysis indicates high probable incremental impacts of designating a particular critical habitat unit of lower conservation value (relative to the remainder of the designation), the Service may consider exclusion of that particular unit.

As discussed above, the Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the elfin-woods warbler based on economic impacts.

Exclusions Based on Impacts on National Security and Homeland Security

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. We have determined that the lands within the final designation of critical habitat for the elfin-woods warbler are not owned or managed by the Department of Defense or Department of Homeland Security, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that some areas within the final designation are included in management plans or other conservation agreements such as the Service's Wildlife Conservation Extension Agreements with private landowners, Natural Resources Conservation Service's conservation contracts with private landowners, cooperative

agreements with nongovernmental organizations (NGOs), and the CCA signed at the end of 2014 among the Service, U.S. Forest Service, and PRDNER to implement conservation practices for the recovery of the elfin-woods warbler within EYNF and MCF.

Although the initiatives with private landowners and NGOs promote the restoration and enhancement of elfin-woods warbler habitat adjacent to the EYNF and MCF, potential challenges such as limited resources and uncertainty about landowners' participation may affect the implementation of conservation practices that mitigate impacts of agricultural practices and ensure the conservation of the species' essential habitat. We do not anticipate any negative effects of designating critical habitat in areas where existing partnerships occur. Further, there are no tribal lands in Puerto Rico. Therefore, the Secretary is not exercising his discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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.

Under the RFA, as amended, and as understood in the light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule, we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

Executive Order 13771

We do not believe this rule is an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this rule.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. Our economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with elfin-woods warbler conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect

energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

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

(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 because the majority of the critical habitat units are already managed for natural resource conservation by the Federal government or the Commonwealth of Puerto Rico, and all critical habitat units have co-occurring federally listed species that are already being considered by the Commonwealth and municipalities for any actions proposed in the area. Therefore, a Small Government Agency Plan is not required.

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 elfin-woods warbler in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat 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. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for elfin-woods warbler does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the proposed critical habitat designation with, appropriate State resource agencies in Puerto Rico. We did not receive comments from Federal agencies for this rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. 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.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological

features essential to the conservation of the elfin-woods warbler. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

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

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

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 pursuant to the National Environmental Policy Act (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)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above, there are no tribal lands in Puerto Rico, and therefore, we have identified no tribal interests that will be affected by this final rulemaking.

References Cited

A complete list of all references cited is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030 and upon request from the Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Caribbean Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

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

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; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Warbler, elfin-woods (*Setophaga angelae*)'' under ''BIRDS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
BIRDS				
*	*	*	*	*
Warbler, elfin-woods	*Setophaga angelae*	Wherever found	T	81 FR 40534, 6/22/2016; 50 CFR 17.41(e);[4d], 50 CFR 17.95(b).[CH]
*	*	*	*	*

■ 3. In § 17.95, amend paragraph (b) by adding an entry for ''Elfin-woods Warbler (Setophaga angelae)'', immediately following the entry for ''Least Bell's Vireo (Vireo bellii pusillus)'', to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Elfin-woods Warbler (*Setophaga angelae*)

(1) Critical habitat units are depicted for Puerto Rico, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the elfin-woods warbler consist of the following components:

(i) Wet and rain montane forest types:

(A) *Podocarpus* forest at elevations between 600 and 900 meters (m) (1,968 and 2,952 feet (ft)) with continuous closed canopy of 20 m (66 ft) in height, dominated by *Podocarpus coriaceus* trees with well-developed understory.

(B) Dwarf forest at elevations above 900 m (2,952 ft) with a single story of trees between 1 and 6 m (3 and 19 ft) in height, with an understory of mosses, epiphytes, and liverworts.

(C) Palo Colorado forest at elevations between 600 and 900 m (1,968 and 2,952 ft) with a closed canopy of approximately 20 m (66 ft) and an understory dominated by grasses, ferns, bromeliads, and sedges.

(ii) Forested habitat areas that contain:

(A) Active shade-grown coffee plantations or forested agricultural

lands that are above 300 m in elevation and dominated primarily by native vegetation; or

(B) Abandoned coffee plantations or agricultural lands (*i.e.,* agricultural practices were discontinued) with native forest cover and a closed canopy found above 300 m in elevation.

(iii) Forested habitat (at elevations between 300 and 850 m (984 and 2,788 ft)) not contained within the habitats described in paragraphs (2)(i) and (ii) of this entry:

(A) Exposed ridge woodland forest found in valleys, slopes, and shallow soils with a more or less continuous canopy at elevations ranging from 550 to 750 m (1,804 to 2,460 ft);

(B) Timber plantation forest at elevations ranging from 630 to 850 m (2,066 to 2,788 ft); or

(C) Secondary forests dominated by native tree species with a closed canopy of approximately 20–30 m (66–100 ft) in height at elevations ranging from 300 to 750 m (984 to 2,460 ft).

(3) 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 on July 30, 2020.

(4) *Critical habitat map units.* Data layers defining map units were created by delineating habitats that contain at least one or more of the physical or biological features defined in paragraph (2) of this entry, over a U.S. Department of Agriculture 2007 digital orthophoto mosaic, over a base of U.S. Geological Survey digital topographic map quadrangle, and with the use of a digital landcover layer. The resulting critical habitat unit was then mapped using State Plane North American Datum 83 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site, *http://www.regulations.gov* under Docket No. FWS–R4–ES–2020–0030, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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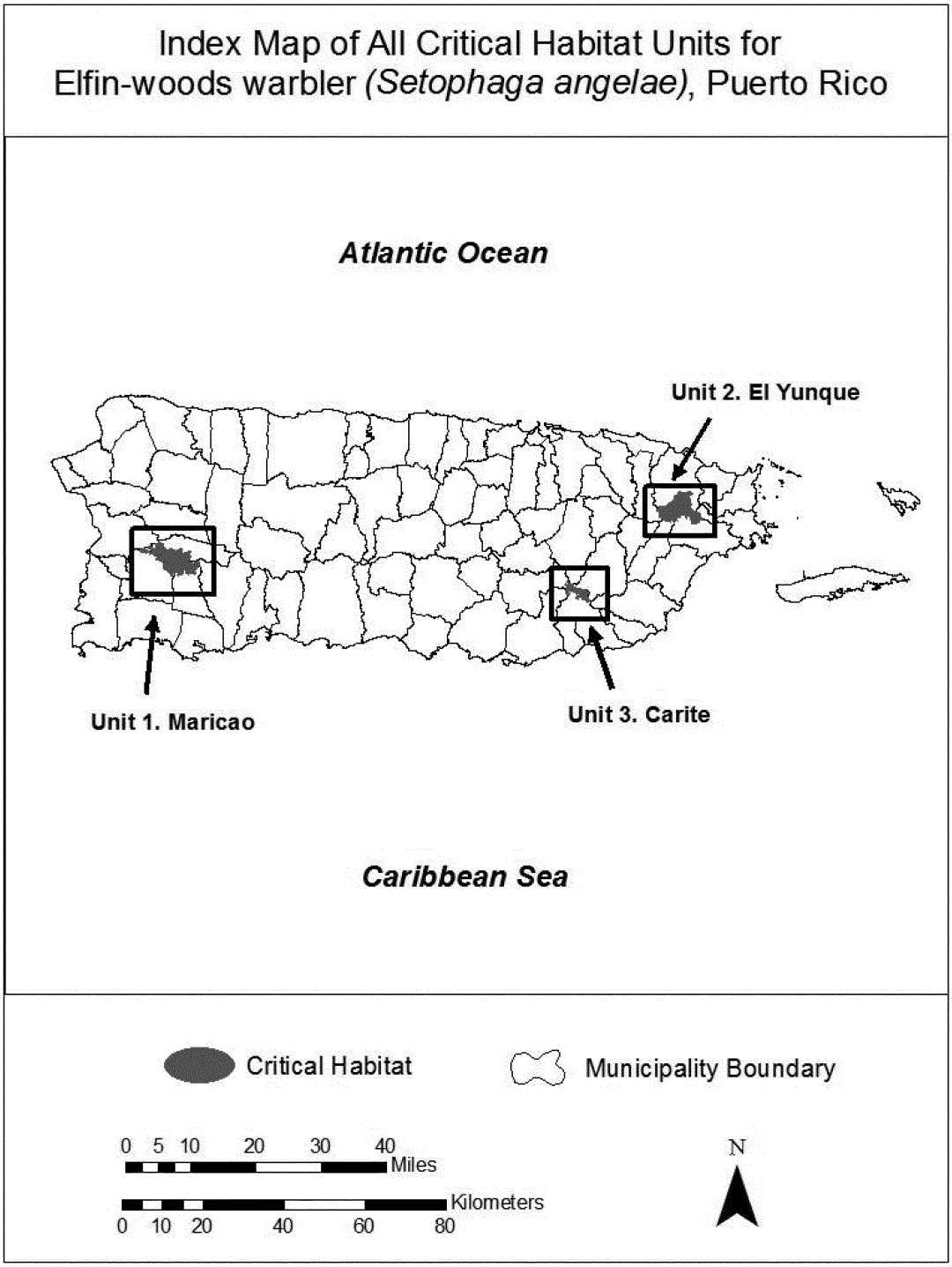
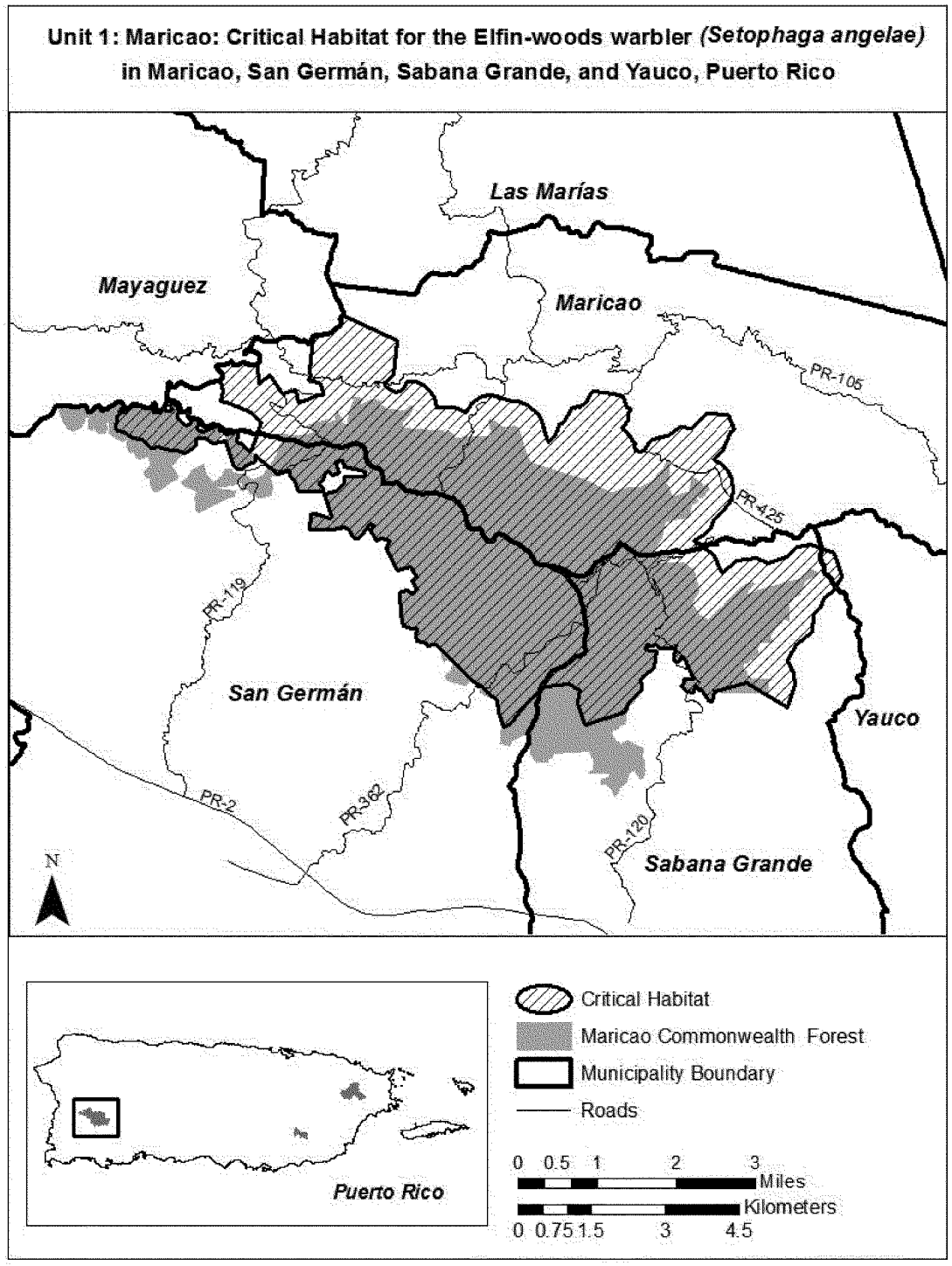


(6) Unit 1: Maricao; Maricao, San Germán, Sabana Grande, and Yauco Municipalities, Puerto Rico.

(i) *General description:* Unit 1 consists of 12,978 ac (5,252 ha). Approximately 8,861 ac (3,586 ha) are owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources, and 4,117 ac (1,666 ha) are in private ownership. The unit is located north of State Road PR–2, south of State Road PR–105, and approximately 105 kilometers 65 mi (105 km) west of the International Airport Luis Muñoz Marin.

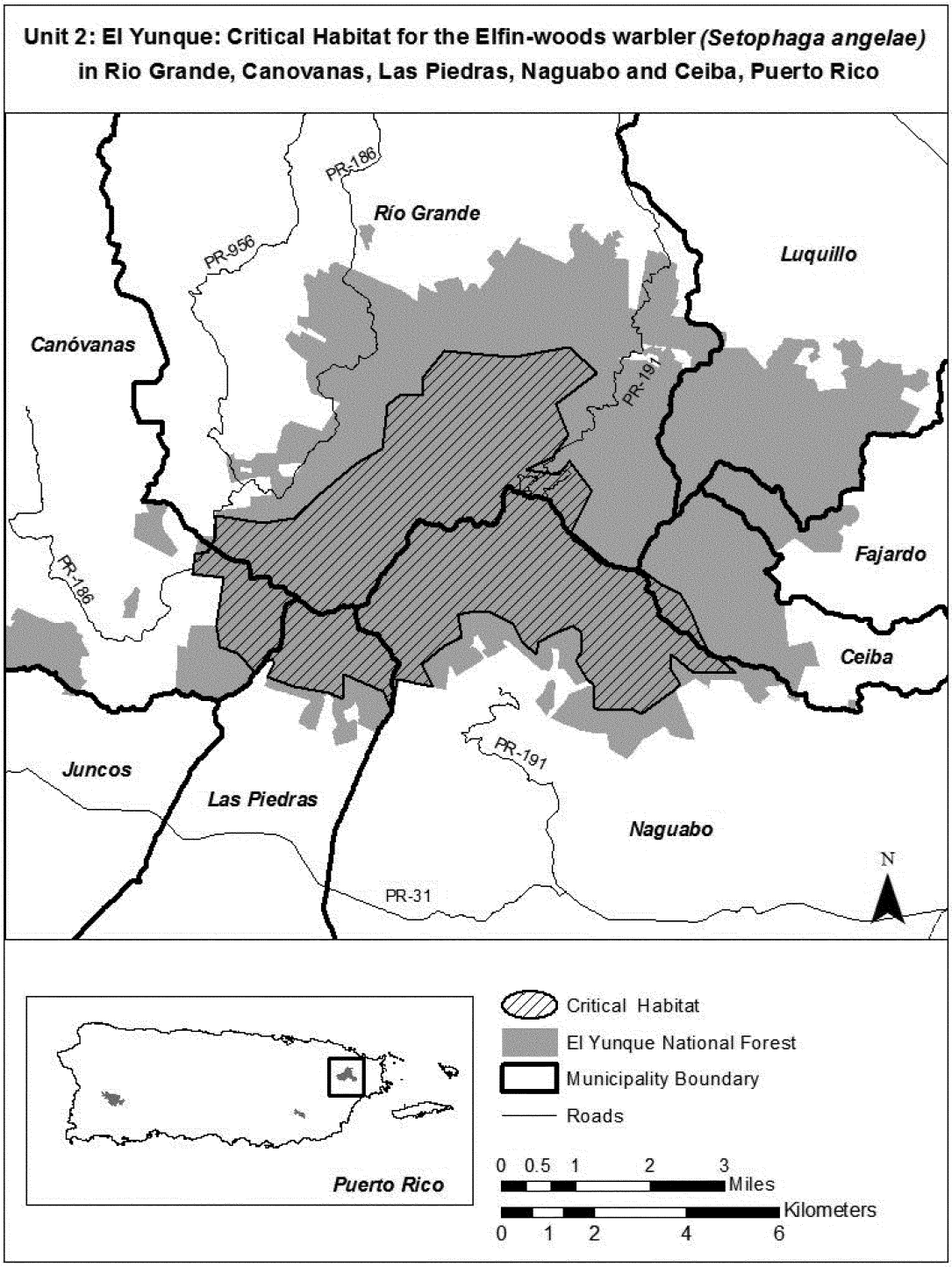
(ii) Map of Unit 1 habitat follows:



(7) Unit 2: El Yunque; Río Grande, Canovanas, Las Piedras, Naguabo, and Ceiba Municipalities, Puerto Rico.

(i) *General description:* Unit 2 consists of 11,430 ac (4,626 ha) of federally owned land managed by the U.S. Forest Service (El Yunque National Forest). The unit is located within El Yunque National Forest, east of State Road PR–186, north of State Road PR–31, and approximately 24 km (15 mi) east of the International Airport Luis Muñoz Marin.

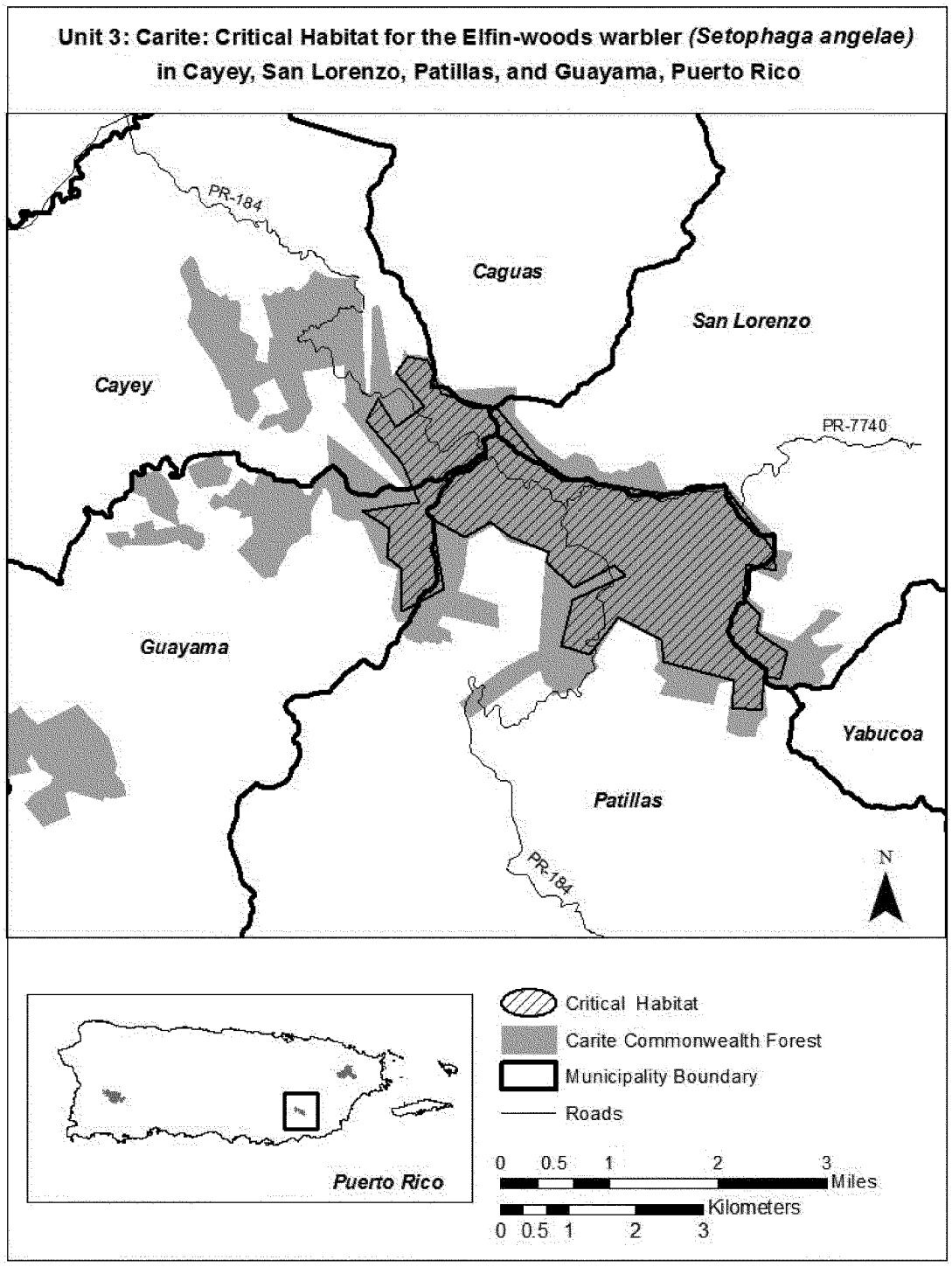
(ii) Map of Unit 2 follows:



(8) Unit 3: Carite; Cayey, San Lorenzo, Guayama, and Patillas Municipalities, Puerto Rico.

(i) *General description:* Unit 3 consists of 3,080 ac (1,247 ha) of lands owned by the Commonwealth and managed by the Puerto Rico Department of Natural and Environmental Resources. The unit is located within the Carite Commonwealth Forest west of State Road PR–7740 and State Road PR–184 that run within the Carite Commonwealth Forest, and approximately 23 mi (37 km) south of the International Airport Luis Muñoz Marin.

(ii) Map of Unit 3 follows:



* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–12070 Filed 6–29–20; 8:45 am]

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