

Flooding source(s)	Location of referenced elevation	Elevation in feet *(NGVD) Elevation in feet +(NAVD)		Communities affected
		Effective	Modified	

Maps are available for inspection at the Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, TN 37064.

Send comments to the Honorable Roger Anderson, Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.

#### City of Brentwood:

Maps are available for inspection at Brentwood City Hall, 5211 Maryland Way, Brentwood, TN 37027.

Send comments to the Honorable Ann Dunn, Mayor, City of Brentwood, P.O. Box 788, Brentwood, TN 37024.

#### City of Fairview:

Maps are available for inspection at Fairview City Hall, 1874 Fairview Boulevard, Fairview, TN 37062.

Send comments to the Honorable Stewart Johnson, Mayor, City of Fairview, P.O. Box 69, Fairview, TN 37062.

#### City of Franklin:

Maps are available for inspection at Franklin City Hall, 109 Third Avenue South, Franklin, TN 37064.

Send comments to the Honorable Thomas Miller, Mayor, City of Franklin, 109 Third Avenue South, Franklin, TN 37064.

#### Town of Nolensville:

Maps are available for inspection at Nolensville Town Hall, 7240 Nolensville Road, Suite 102, Nolensville, TN 37135.

Send comments to the Honorable Charles F. Knapper, Mayor, Town of Nolensville, P.O. Box 547, Nolensville, TN 37135.

#### City of Spring Hill:

Maps are available for inspection at Spring Hill City Hall, 199 Town Center Parkway, Spring Hill, TN 37174.

Send comments to the Honorable Danny Leverette, Mayor, City of Spring Hill, P.O. Box 789, Spring Hill, TN 37174.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: December 5, 2005.

David I. Maurstad,

Acting Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AU50

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Laguna Mountains Skipper

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Laguna Mountains skipper (*Pyrgus ruralis lagunae*), pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 6,662 acres (ac) (2,696 hectares (ha)) fall within the boundaries of the proposed critical habitat in two units that are divided into a total of seven subunits on Laguna and Palomar Mountains in San Diego County, California. Five subunits are occupied. Two subunits are not known to be currently occupied or occupied at

the time of listing, but are connected to occupied habitat, were historically occupied, and also contain physical and biological features essential to the conservation of the species.

**DATES:** We will accept comments from all interested parties until February 13, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 27, 2006.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials—identified by RIN 1018-AU50—concerning this proposal by any one of several methods:

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

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

3. You may fax your comments to 760-431-9624.

4. You may send comments by electronic mail (e-mail) to [FW8pchskipper@fws.gov](mailto:FW8pchskipper@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

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

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife

Office, 6010 Hidden Valley Rd., Carlsbad, CA 92011 (telephone 760-431-9440).

#### FOR FURTHER INFORMATION CONTACT:

Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Rd., Carlsbad, CA 92011, (telephone 760/431-9440; facsimile 760/431-9624).

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Laguna Mountains skipper habitat, and which areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why, and which areas not occupied at the listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas

and their possible impacts on proposed critical habitat;

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

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Please submit Internet comments to [FW8pchskipper@fws.gov](mailto:FW8pchskipper@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Laguna Mountains skipper" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760-431-9440. Please note that the Internet address [FW8pchskipper@fws.gov](mailto:FW8pchskipper@fws.gov) will be closed out at the termination of the public comment period.

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

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

Attention to and protection of habitat is paramount to successful conservation

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

Currently, only 471 species, or 37 percent of the 1,272 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,272 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*. In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate

analysis has been conducted that is informed by the Director's guidance.

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

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

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

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

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

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse

impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Laguna Mountains skipper, refer to the final rule listing the species as endangered, published in the **Federal Register** on January 16, 1997 (62 FR 2313).

### Species Description

The Laguna Mountains skipper is a member of the family Hesperidae (skippers), and is one of two recognized subspecies of *Pyrgus ruralis*. Skippers are generally small bodied with a fast, erratic flight pattern. Adult Laguna Mountains skippers have a wingspan of approximately one inch (two and a half centimeters) (Garth and Tilden 1986; Osborne *in litt.* 2004) and are distinguished from other co-occurring skipper species by their checkered dark brown and white appearance (Osborne *in litt.* 2004). The submarginal spots on the hind wing form a distinguishing "X" shape, and the dark bands on the marginal fringe of the hind wing extend prominently across the fringe (Levy 1994).

Adult females lay their eggs on the outer leaves of their hostplant (i.e., a plant on which the larvae feed and develop). In many species of butterfly, the hostplants are limited to one or two species. The main hostplant for the Laguna Mountains skipper is *Horkelia clevelandii* (Cleveland's horkelia). Eggs of the Laguna Mountains skipper develop and hatch in approximately 12 to 14 days (Mattoni and Longcore 1998; Pratt 1999), with some variation likely due to habitat microsite conditions and local weather. Development from egg to pupa takes approximately 7 weeks.

### Habitat

The Laguna Mountains skipper has specialized habitat requirements within a narrow geographic distribution. The Laguna Mountains skipper is known to occur in a matrix of pine and mixed conifer/oak forests, meadows, small forest openings, and forest edges that support larval host plants between 3,800 and 6,000 feet (ft) (1,158 and 2,000 meters (m)) in elevation (Emmel and Emmel 1973; Levy 1997; Mattoni and Longcore 1998; Pratt 1999; Osborne 2002).

Habitat has been primarily identified by the presence or abundance of the species' main larval host plant, *Horkelia clevelandii*. However, habitat also consists of all resources, such as nectar-producing plants and surface moisture, or puddles, that provide feeding, breeding and sheltering for adult butterflies. One scientific study of Laguna Mountains skipper habitat has been conducted. Williams and Bailey (2004) investigated geographic variation in presumed habitat characteristics among geographic locations, and differences in habitat characteristics between sites with and without a known history of Laguna Mountains skipper observations. Research indicates that sites with a known history of Laguna Mountains skipper sightings had more bare ground, larger host plant patches, and larger, taller *H. clevelandii* plants than sites where Laguna Mountains skippers had not been seen.

Until recently, *Horkelia clevelandii* was thought to be the only host plant species used by the Laguna Mountains skipper. However, the use of *Potentilla glandulosa* as a host plant in the wild was first documented on Palomar Mountain by Pratt (1999). This was later confirmed in 2004 in Mendenhall Valley (Ken Osborne, pers. comm. 2004). Both host plant species grow in clusters low to the ground and are relatively small, long-lived, non-woody (herbaceous) plants in the rose family (Rosaceae).

### Status and Distribution

When the Laguna Mountains skipper was listed in 1997, the species was known from Palomar and Laguna Mountains in San Diego County (62 FR 2313). However, its primary host plant, *Horkelia clevelandii*, has a much wider distribution, extending from the San Jacinto, Palomar, Cuyamaca, and Laguna Mountains of southwestern California, south to Sierra San Pedro Martir, in Baja, California, Mexico (Keck 1938; Hickman 1993). Within the Laguna Mountains, the surrounding forests are dominated by Jeffery pine (*Pinus jefferii*)

and black oak (*Quercus kelloggii*), while the Palomar Mountains are dominated by a mixed forest comprised of Jeffery pine, white fir (*Abies concolor*), incense cedar (*Calocedrus decurrens*), and black oak.

During the 1950s and 1960s, Laguna Mountains skippers were commonly recorded from several locations on Laguna Mountain, including Big Laguna, Boiling Springs, East Laguna, Horse Haven Springs, Laguna Lake and Little Laguna Meadow (Levy 1994). Surveys conducted since 1994 have detected adult Laguna Mountains skippers only near Little Laguna Meadow, at the El Prado/Laguna Campground (Pratt 1999). Although historic records of the species in the Laguna Mountains with specific location descriptions are all in the vicinity of the greater Laguna Meadow, this is likely an artifact of access and where sites were known to collectors (Levy 1994). Other areas, such as Horse Meadow to the south, also contain features identified as essential for sustaining Laguna Mountains skipper populations (Levy 1994).

The Laguna Mountains skipper was first recorded on Palomar Mountain in 1947, at an unspecified location (San Diego Natural History Museum, in Levy 1994). In 1991 Dan Lindsley collected two specimens in "the last small meadow before the Palomar Observatory" (Levy 1994). Since its discovery, the Laguna Mountains skipper has been recorded at several Palomar Mountain locations on Federal, State, and private lands, but only one site (Mendenhall Valley) exists where adults can be reliably found (Levy 1994, 1996, 1997; Pratt 1999; Faulkner *in litt.* 2000; Osborne 2002, 2003). New sightings in 2001 in the Pine Hills area (a location not known at the time of listing) provide the lowest elevation observation record of this species, recorded at 3,840 ft (1,170 m) (Osborne 2002).

The listing rule (62 FR 2313) stated that the Laguna Mountains skipper had been reported from four (unspecified) sites on Palomar Mountain. Upon evaluation of GIS data available at the time of listing, and other data available at time of listing (e.g., Levy 1994), we identified these sites as lower French Valley, Palomar Observatory Campground, Palomar Observatory Meadow, and Mendenhall Valley. The more recent Observatory Trail locations are in a meadow/woodland transition area at the southeastern end of Upper French Valley, and the campground location is between Mendenhall Valley and Upper French Valley. The campground and trail sites are small

woodland openings that are unlikely to support an isolated population long-term. Mark-release-recapture studies of a related skipper species (the grizzled skipper, *Pyrgus malvae*) occupying similar habitat recorded adult movement among forest openings of more than 0.62 mi (1 km) (M. Brereton in Levy 1994). Therefore, small forest openings create landscape connectivity (habitat the species is capable of occupying and moving through) among larger meadows. The distributions of small occupied forest openings and meadows (meadow complexes) indicate historic occupancy of Laguna Mountains skipper populations throughout the northern Palomar Mountains meadow system, including unsurveyed portions of Upper French Valley.

Based on the findings of the mark-release recapture study (M. Brereton in Levy 1994), grizzled skipper adults are sedentary most of the time, rarely moving further than 20 m, but do move distances greater than 1 km. This movement pattern and the distribution of observations among several small forest openings and meadows are characteristic of local alpine butterfly populations belonging to a greater metapopulation distribution (e.g., Boughton 1999). If the Laguna Mountains skipper populations are characterized by metapopulation dynamics, habitat patches within the population distribution not occupied at any given time are still required for population viability.

No repeated, systematic population status studies of the Laguna Mountains skipper have been conducted. While individuals can regularly be found in the Mendenhall Valley on Palomar Mountain, the long-term viability of the species on Laguna Mountain is uncertain. Surveys suggest the species has declined in the Laguna Mountains, although very little is known regarding the species' population status or dynamics throughout its range. The Laguna Mountains skipper has never been recorded outside of Laguna or Palomar Mountains; however, the species may have been more widespread historically throughout the higher elevations of San Diego County (Brown *in litt.* 1991). The species could potentially occupy the Cuyamaca Mountains north of Laguna Mountain and the San Jacinto Mountains in Riverside County, as these areas all contain meadows and host plants (Keck 1938) at appropriate elevations, and are proximal to occupied mountains. However, few survey data exist for mountains where the Laguna Mountains

skippers were not known to historically occur.

Historically, Palomar Mountain populations were considered small compared to Laguna Mountain populations, with only 5 specimens reported prior to 1991 (Brown *in litt.* 1991). Today, Palomar Mountain appears to sustain the largest known population of the Laguna Mountains skipper. The number of individuals occupying Mendenhall Valley has been estimated between approximately 240 individuals in 1994 (Levy 1994) and approximately 1,470 individuals in 1998 (Mattoni and Longcore 1998). Levy (1994) based his estimate on adult surveys and stated that his estimate of approximately 240 adult butterflies could be much higher than the actual number. Mattoni and Longcore (1998) based their estimate on the number of eggs and larvae found on host plants within a specific area. From this they extrapolated to an adult population estimate based on the abundance of host plants, average fecundity, and equal sex ratios. These estimates differ significantly, at least in part due to differences in methodology.

Populations in the Laguna Mountains appear to be small, and possibly bordering on extirpation. Surveys of varying intensity and duration were conducted in 8 of the 10 years between 1994 and 2003. During this 10-year period, only 4 adult skippers were found: a single individual in 1995 (Levy 1997), 1 adult in 1996 (Levy 1997), and 2 adults in 1999 (Pratt 1999). All observations of adult skippers have been at the El Prado/Laguna Campground. A single skipper larval shelter was found in 1997 at the Meadow Kiosk along the Sunrise Highway (Pratt 1999), documenting a new location of occupied habitat. However, no adults were observed at this location. Adult skippers have not been documented in the Laguna Mountains since 1999.

#### Previous Federal Actions

For information on previous Federal actions for the Laguna Mountains skipper, refer to the final rule listing for this species and the Quino Checkerspot Butterfly (*Euphydryas editha quino*) as endangered (62 FR 2313). At the time of listing, the Service determined that critical habitat was not prudent, citing that the publication of precise maps and descriptions of critical habitat could result in additional habitat destruction through trampling, discing, and grading as well as collection (62 FR 2313). On January 10, 2003, the Center for Biological Diversity (Center) filed a lawsuit against the Service for violations under the Act and the Administrative

Procedure Act (5 U.S.C. Subchapter II) for the Service's failure to designate critical habitat for the species (*CBD v. USFWS Civ. No. 03-0058-BTM (NLS)*). In a stipulated settlement agreement dated July 29, 2003, the Service agreed to reconsider its "not prudent" finding and propose critical habitat, if prudent, on or before November 30, 2005, and to publish a final critical habitat rule, if prudent, on or before November 30, 2006. This proposed rule complies with the settlement agreement. We have reconsidered our not prudent finding, and now believe that identification of primary constituent elements and essential areas (critical habitat designation) may provide educational information to individuals, local and State governments, and other entities. Because this species is so limited in geographic range, most landowners and collectors have been aware of its presence since listing. Unlike the Quino checkerspot butterfly listed in the same rule, collectors have always known where to find the Laguna Mountains skipper, however, access to the best site is restricted because it can only be reached through private land (Mendenhall Valley).

#### Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or

adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

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

Habitat occupied at the time of listing may be included in critical habitat when the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) In addition, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area currently occupied by the species that was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, may therefore, be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to

use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

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

#### Methods

As required by section 4(b)(2) the Act we use the best scientific data available in determining areas that contain features that are essential to the conservation of the Laguna Mountains skipper. These include data from field surveys for *Horkelia clevelandii*,

regional Geographic Information System (GIS) vegetation and species coverages, data compiled in the California Natural Diversity Database (CNDDB), and survey data for the Laguna Mountains skipper from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. Based on the assessment of those physical and biological components identified above, the known and historic occurrences of Laguna Mountains skipper, and available information on the distribution of *H. clevelandii*, we identified proposed critical habitat.

#### Primary Constituent Elements

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

The specific primary constituent elements required for the Laguna Mountains skipper are derived from the biological needs of the species as described in the Background section of this proposal and the final listing rule.

#### *Food, Water, or other Nutritional or Physiological Requirements*

Laguna Mountain skippers require sunlight provided in the open meadows, open woodlands, or other forest openings. Butterflies are exothermic and, like most insects, body temperature is of overriding importance in limiting flight (Chapman 1982). Butterfly flight activity is limited by light intensity. Therefore, they require areas for basking in the sun in order to raise their body temperature for flight (Chapman 1982). Additionally, surface moisture such as puddles and seeps (not flowing water) provide water and minerals for adults. Adult Laguna Mountains skippers need annual or perennial nectar sources including meadow and woodland-associated herbaceous annual wildflowers, and perennial herbs (*e.g.*

*Lasthenia* spp. (goldfields), *Pentachaeta aurea* (golden-rayed pentachaeta), *Ranunculus* spp. (buttercups), and *Sidalcea* spp. (checkerbloom)).

#### *Sites for Breeding and Reproduction*

The Laguna Mountains skippers requires *Horkelia clevelandii* host plants to lay eggs on and for the caterpillars to eat and construct pupal shelters, and may also require *Potentilla glandulosa*. Host plant patches must be dense enough to support breeding (provide multiple and diverse sites for depositing eggs), although the exact host-plant patch size and density required for breeding is not known. A "patch" of host plants may consist of one to several clumps of *H. clevelandii* or *P. glandulosa* growing together, as well as numerous individual plants that are growing in close proximity.

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

Because the current geographic range is fragmented and small, population densities are relatively low, and the quality of most breeding habitat has been compromised to some degree by grazing, recreation impacts, or exotic plant invasion, all landscape connectivity areas among occupied meadows and forest openings that adult Laguna Mountains skippers can move through are required for survival of the species. In order to facilitate the use of connectivity areas for adult movement between breeding sites, it is important to maintain populations of hostplants and adult nectar sources, even if they are not likely to be used for breeding.

#### *Historic and Geographic Distribution of the Species*

The occupied areas proposed for designation are representative of the historic and geographical distribution of the species. Areas proposed for designation that are not known to be occupied were all historically occupied and will restore a portion of the historic geographic distribution of Laguna Mountains skipper. Connectivity is required for recolonization of habitat to occur (e.g., after extirpation by fire) and for genetic diversity to be maintained.

#### *Primary Constituent Elements for the Laguna Mountains skipper*

The specific primary constituent elements required for the Laguna Mountains skipper are derived from the biological needs as described in the Background section of this proposal. These include all areas within Palomar and Laguna Mountains that sustain the main host plant of the Laguna Mountains skipper, *Horkelia*

*clevelandii*, and associated habitat containing *Potentilla glandulosa*, including movement areas between meadows and forest openings. The specific biological and physical habitat features identified as essential for sustaining Laguna Mountains skipper populations are:

1. The host plants, *Horkelia clevelandii* or *Potentilla glandulosa*, in meadows or forest openings needed for reproduction.

2. Nectar sources suitable for feeding by adult Laguna Mountains skipper, including *Lasthenia* spp., *Pentachaeta aurea*, *Ranunculus* spp., and *Sidalcea* spp. found in woodlands or meadows.

3. Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

This proposed designation is designed for the conservation of PCEs necessary to support the life history functions which were the basis for the proposal. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

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

#### **Criteria Used To Identify Critical Habitat**

To delineate proposed critical habitat, we identified meadow complexes (meadows and forest openings connected by open forest canopy) on Palomar and Laguna Mountains known to be occupied by the Laguna Mountains skipper at the time of listing and known to be currently occupied. The species is currently known to occupy only one meadow complex (Laguna Meadow) on Laguna Mountain, but we also identified two other meadow complexes on Laguna Mountain that contain habitat with features essential to the conservation of the species. These meadow complexes have not been extensively surveyed and are not currently known to be occupied. However, Laguna Mountain as a whole was known to be historically occupied by the skipper. These areas are important for expansion and enhancement of populations in Laguna Meadow and are therefore considered essential to the conservation of the species.

Using infrared satellite imagery, we delineated the proposed critical habitat boundaries by outlining identified meadow complexes. In delineating proposed critical habitat boundaries, we included areas within meadow complexes containing relatively dense *Horkelia clevelandii* observations. Finally, maps were produced by fitting a 100 meter grid outline to the initial hand-drawn outlines.

When determining proposed critical habitat boundaries, we made every effort to avoid including within the boundaries of the map contained within this proposed rule developed areas such as buildings, paved areas, and other structures that lack PCEs for the Laguna Mountains skipper. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

We are proposing to designate critical habitat on lands that we have determined were occupied at the time of listing and contain sufficient primary constituent elements to support life history functions essential for the conservation of the species. We are also proposing subunits that were not known to be occupied at the time of listing but have been determined to be essential for the conservation of the Laguna Mountains skipper. Occupied subunits were designated based on sufficient PCEs being present to support Laguna Mountains skipper life processes. All subunits contain all of the PCEs and support multiple life processes.

At this time, based on the best available information, we have determined that without management and protection for the habitat of the Laguna Mountains skipper in the areas not known to be occupied at the time of listing or known to be currently occupied, conservation of the species will not be possible in the foreseeable future, and these areas are accordingly essential to the conservation of the species.

#### **Special Management Considerations or Protections**

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those

physical and biological features essential to the conservation of the species pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection. Threats to those essential features that define critical habitat (primary constituent elements) for the Laguna Mountains skipper include the direct and indirect impacts of human development and recreation, surface and groundwater management practices, and grazing intensity.

Areas proposed as critical habitat are composed of 36 percent private land holdings, where habitat is subject to rural development and other land use changes, overgrazing, potential stream and groundwater diversions, and recreational activities. State and Federal landholdings (6 and 36 percent, respectively) are also subject to grazing and recreational activities. While designation of critical habitat does not impose any management requirements, particularly on State or private land, the following are measures that could be undertaken to benefit the species.

Grazing can cause direct mortality of larvae and eggs by trampling and consumption. The density of cattle grazed in meadow habitat should be monitored and regulated, as well as levels of habitat degradation resulting from existing grazing. Adaptive management may be needed to adjust cattle grazing intensity, and protection measures may include exclosures to prevent grazing. Monitoring of potential changes in hydrology caused by stream and groundwater diversions should be undertaken as well as any necessary management to prevent habitat conversion.

On Palomar Mountain, commercial drinking water projects and private stream alterations are currently diverting stream and groundwater to an unknown extent. Drying of meadows results in vegetation changes (for a general discussion see Naumburg *et al.* 2005) that could eliminate primary constituent elements within Laguna Mountains skipper habitat (e.g. host plants and surface moisture, PCEs 1 and 3). Recreational activities such as camping and horseback riding increase encroachment of exotic vegetation and can cause direct mortality of Laguna Mountains skipper larvae by trampling (Pratt 1999). Alteration of host plant distribution and availability, plant canopy closure, and availability of resources such as nectar and moisture (all PCEs) can result from disturbance by cattle and humans, and habitat

conversion due to changes in surface and groundwater availability.

Pursuant to a consultation with the Service under section 7 of the Act, the Cleveland National Forest has implemented some measures on their land to minimize impacts to the Laguna Mountains skipper. However, no management plan exists that addresses conservation of this species in the Cleveland National Forest. Therefore, special management may be needed to minimize impacts to the skipper resulting from recreation and exotic plant invasion.

We believe areas proposed for designation as critical habitat contain physical and biological features essential for the conservation of the Laguna Mountains skipper, and may require some level of management and/or protection to address current and future threats to the Laguna Mountains skipper. Subunits 2A, 2B, and 2C may require special management due to all threats described above. All subunits in Unit 1 may require special management due to all threats described above except diverting stream and groundwater. Subunit 2D may require primarily management of recreation impacts. Economic or fire management activities, such as logging, fuel modification, and relatively low density grazing, should not adversely modify habitat if carefully managed to minimize or avoid destruction of host plants.

#### Proposed Critical Habitat Designation

We are proposing 2 units made up of 7 subunits, totaling 6,662 ac (2,696 ha) as critical habitat for the Laguna Mountains skipper. The critical habitat areas described below constitute our best assessment at this time of areas determined to be occupied at the time of listing, contain the primary constituent elements and may require special management, and those additional areas that were not known to be occupied at the time of listing but found to be essential to conservation of the Laguna Mountains skipper. Proposed critical habitat areas encompass approximately 3,887 ac (1,574 ha; 58 percent) of Federal land ownership, 381 ac (154 ha; 6 percent) of State land ownership, and 2,394 ac (968 ha; 36 percent) of private land ownership. No Tribal lands were included in this proposed designation.

The 2 units proposed as critical habitat are: (1) Palomar Mountain; and, (2) Laguna Mountain. Brief descriptions of the units are presented below. Four subunits (1A, 2A, 2B, 2D) were known to be occupied at the time of listing, one subunit was not known to be occupied at the time of listing but is known to be

currently occupied (2C), and two subunits (1B and 1C) were not known to be occupied at the time of listing and are not known to be currently occupied, but are connected to occupied habitat, were historically occupied, and contain physical and biological features essential to the conservation of the species and are themselves essential to the conservation of the species.

All subunits not currently known to be occupied are contiguous with occupied subunits and ensure representation of the historic geographical distribution not otherwise represented by the occupied subunits. There is potential for current occupancy in subunits not currently known to be occupied, as survey efforts in these areas have been limited. No conclusive evidence is available to indicate complete absence of Laguna Mountains skipper at any of these sites; few, incomplete, or no recent surveys have been conducted at sites not currently known to be occupied. Species detectability is generally low (e.g. Pratt 1999), particularly if the population occurs in low numbers. Surveys may have missed sightings, as shown by repeated collections near Little Laguna Lake where historically there were many observations, followed by repeated reports of no occurrences, with subsequent population "re-discovery" (Pratt 1999). The current, overall population size of the Laguna Mountains skipper is at such a low level that it was thought to have possibly been extirpated in the Laguna Mountains at the time of listing (Levy 1994; 62 FR 2313).

While occupied subunits provide some habitat for current populations, unoccupied subunits would provide habitat for population augmentation either through natural means, or by re-introduction. (**Note:** We believe that given the species' small population size and very limited range, reintroduction may be necessary for long-term persistence of the species. We are not currently developing a reintroduction plan. However, we've identified the potential need for a propagation and reintroduction program as a recovery task in the draft recovery plan citing that such a program may be necessary for recovery of the species, especially in the Laguna Mountains where the species has been documented to occur in one meadow area. We do not anticipate that section 10(j) would apply to any reintroduction (or augmentation) of Laguna Mountains skipper on either the Palomar or Laguna Mountains since they would not be separated geographically from the existing populations.) As stated in the final rule



listing the species as endangered (62 FR 2313), one of several naturally occurring events could extirpate the existing population due to its very restricted range and extremely localized distribution. The inclusion of unoccupied subunits in critical habitat would reduce the threat that catastrophic naturally occurring events such as the Cedar Fire that burned part of Laguna Mountain in 2003 (*e.g.*, IBAERT 2003) would extirpate the population by providing additional available habitat that the species could expand into. Therefore, we have determined that expansion of the species into habitat not currently known to be occupied and connectivity with existing occupied habitat is necessary to conserve the species. Based on the best available information, we have determined that management and protection for the Laguna Mountains skipper in areas historically occupied and known to be currently occupied on Laguna Mountain is necessary.

### Unit Descriptions

#### *Unit 1: Laguna Mountain*

Unit 1 encompasses approximately 3,763 ac (1,523 ha), and is approximately centered on Laguna Mountain peak located in south-central San Diego County east of the community of Alpine. This unit is divided into three subunits containing all the primary constituent elements. This unit is crucial to the species the species primarily because the species was first described from this unit and represents the southernmost portion of the species range. Maintaining two widely separate units (*i.e.*, Laguna and Palomar Mountains) and multiple subunits limits the potential for a catastrophic event from extirpating all remaining populations. Because the number of known occupied sites and low population densities are not sufficient to overcome the threat of extirpation, connectivity and expansion into unoccupied meadow complexes is necessary for the conservation of the Laguna Mountains skipper. Connectivity is important for recolonization of habitat to occur (*e.g.* after extirpation by fire) and genetic diversity to be maintained among local populations.

#### *Unit 1A: Laguna Meadow*

Unit 1A (2,829 ac (1,145 ha)) is currently occupied and was known to be occupied at the time of listing. This subunit contains habitat features essential to the conservation of the species and is the site where the species was first described (*i.e.*, northern

Laguna Meadow, near Little Laguna Lake), and is where adults could be reliably found historically. The Cleveland National Forest lands in this unit is subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 2,724 (1,102 ha) of Federal land (*i.e.*, U.S. Forest Service) and 105 ac (43 ha) of privately owned land.

#### *Unit 1B: Filaree Flat*

Subunit 1B (388 ac (157 ha)) is not currently known to be occupied, and was not known to be occupied at the time of listing, but was historically occupied. This subunit is essential because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 1A, (2) provides for population expansion and enhancement, (3) minimizes habitat fragmentation, and (4) is representative of the historic geographical and ecological distribution of the species. Lands in this subunit are subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 368 ac (149 ha) of Federal land (*i.e.*, U.S. Forest Service) and 20 ac (8 ha) of privately owned land.

#### *Unit 1C: Agua Dulce Campground and Horse Meadow*

Subunit 1C (546 ac (221 ha)) is not currently known to be occupied and was not known to be occupied at the time of listing. This subunit is essential because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 1A; (2) provides for population expansion and enhancement; (3) minimizes habitat fragmentation; and, (4) is representative of the historic geographical and ecological distribution of the species. Habitat in this subunit is subject to grazing and recreational activities and may require special management such as grazing density adjustments or additional exclosures to protect host plants. This subunit contains 417 ac (169 ha) of Federal land (*i.e.*, U.S. Forest Service) and 129 ac (52 ha) of privately owned land.

#### *Unit 2: Palomar Mountain*

Unit 2 encompasses approximately 2,899 ac (1,173 ha), and is approximately centered on Palomar Mountain peak located in north-central San Diego County near the border of Riverside County. Unit 2 consists of

subunits containing all the primary constituent elements. Unit 2 includes the most densely populated area in the species' range and encompasses the northernmost portion of the range. Maintaining two widely separate units (*i.e.*, Laguna and Palomar Mountains) and multiple subunits limits the potential for a catastrophic event from extirpating all remaining populations.

#### *Unit 2A: Mendenhall Valley and Observatory Campground*

Subunit 2A (1,092 ac (442 ha)) is known to be currently occupied and was occupied at the time of listing. Subunit 2A supports the largest known population of Laguna Mountains skipper and represents the best opportunity for the survival of this species. This unit is composed of a large amount of private land holdings with habitat potentially subject to future rural development and other land use changes, overgrazing, stream diversion, and private recreational use. This subunit is the only meadow complex (*i.e.*, Mendenhall Valley and associated forest openings) where multiple adults have been consistently detected since the time of listing. Subunit 2A (1) contains habitat features essential for conservation of the species; (2) conserves at least part of the only relatively stable, highest density local population; and (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 231 (94 ha) of Federal land (*i.e.*, U.S. Forest Service) and 861 (348 ha) of privately owned land.

#### *Unit 2B: Upper French Valley, Observatory Trail, and Palomar Observatory Meadows*

Subunit 2B (998 ac (404 ha)) is known to be currently occupied and was occupied at the time of listing. The distribution of small forest openings and meadows and the five observation locations along the Observatory Trail indicate historic occupancy of Laguna Mountains skipper populations in unsurveyed portions of Upper French Valley. Subunit 2B: (1) Contains habitat features essential for conservation of the species; (2) provides for population expansion and enhancement; and, (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, grazing and recreation exclosure maintenance, and grazing density adjustments. This subunit contains 93 (38 ha) of Federal land (*i.e.*,



U.S. Forest Service) and 905 ac (366 ha) of privately owned land.

*Unit 2C: Upper Doane Valley and Girl Scout Camp*

Subunit 2C (547 ac (221 ha)) is known to be currently occupied, but was not known to be occupied at the time of listing. Subunit 2C is also essential to the conservation of this species because it (1) contains habitat features essential to the conservation of populations known to occupy Subunit 2A, (2) allows population expansion and enhancement, and (3) minimizes habitat fragmentation. This area may require special management such as host plant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 40 (16 ha) of Federal land (*i.e.*, U.S. Forest Service), 316 ac (128 ha) of privately owned land, and 191 ac (77 ha) of State owned land (*i.e.* California State Parks).

*Unit 2D: Lower French Valley and Lower Doane Valley*

Subunit 2D (547 ac (221 ha)) is known to be currently occupied and was occupied at the time of listing. Subunit 2C (1) contains habitat features essential to the conservation of populations known to occupy Subunit 2A, (2) allows population expansion and enhancement, and (3) minimizes habitat fragmentation. This area may require special management such as hostplant distribution monitoring, exclosure maintenance, and grazing density adjustments. This subunit contains 14 (6 ha) of Federal land (*i.e.*, U.S. Forest Service), 58 ac (23 ha) of privately owned land, and 190 ac (77 ha) of State owned land (*i.e.* California State Parks).

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse

modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

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

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological

opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

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

Federal activities that may affect the Laguna Mountain skipper or their designated critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal

Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

*Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Laguna Mountains Skipper and Its Critical Habitat*

**Jeopardy Standard**

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

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

**Adverse Modification Standard**

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

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that

may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

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

(1) Actions that destroy Laguna Mountains skipper host plants and immature life stages of the species. Such activities could include, but are not limited to overgrazing by livestock, logging, and recreational activities. These activities could eliminate breeding and nectaring resources for the adults, and directly destroy eggs, pupae, or larvae.

(2) Actions that would long-term or permanently destroy habitat containing primary constituent elements. Such activities could include, but are not limited to, removal or destruction of host plants and nectar sources by paving or piling logs; erection of permanent structures or cultivation of large shrubs or trees that impede adult movement; manipulation of seeps, springs, or creeks that eliminates surface moisture; paved road construction in occupied habitat; and rural development that eliminates or fragments habitat. These activities reduce the amount of available habitat and directly and indirectly increase the extirpation probability of associated Laguna Mountains skipper populations.

(3) Actions that would alter the vegetation of meadow habitat, for example invasion of exotic species or forest encroachment. Such activities could include, but are not limited to, stream or groundwater diversion. These activities could decrease the area of open meadow and soil moisture content and eliminate suitable Laguna Mountains skipper oviposition sites.

Economic or fire management activities, such as logging, fuel modification, and relatively low density grazing should not adversely modify habitat if carefully managed to minimize or avoid destruction of host plants.

**Exclusions Under Section 4(b)(2) of the Act**

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We are not

aware of any habitat conservation plans currently being developed for Laguna Mountains skipper on any lands included in this proposal and the proposed designation does not include any Tribal lands or trust resources. Therefore, we are not proposing any exclusion of critical habitat under section 4(b)(2) of the Act.

The Service is conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be available for public review and comment. Based on public comment on that document, the proposed designation itself, and the information in the final economic analysis, habitat containing essential features for the Laguna Mountains skipper may be excluded from critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act, and in our implementing regulations at 50 CFR 242.19.

**Economic Analysis**

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

**Peer Review**

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least 3 appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

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

## Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

## Clarity of the Rule

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

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

## Required Determinations

### *Regulatory Planning and Review*

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

Fairness Act, and Executive Order 12630.

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

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

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments. The draft economic analysis can be obtained from the internet website at <http://www.fws.gov/carlsbad/> or by contacting the Laguna Mountains skipper directly (see **ADDRESSES**).

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

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

on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

### *Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the Laguna Mountains skipper is considered a significant regulatory action under Executive Order 12866 as it may raise novel legal and policy issues. However, this designation 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. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

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

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

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

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of

critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it is a relatively small designation on mostly public and private land. The public lands being proposed for critical habitat designation are owned by the United States Forest Service and the State of California. None of these government entities fit the definition of "small governmental jurisdiction." As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and as appropriate, review and revise this assessment as warranted.

*Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Laguna Mountains skipper in a takings implications assessment. The takings implications assessment concludes that the proposed designation of critical habitat will not result in significant takings implications.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Laguna Mountains skipper imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and

identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

*Civil Justice Reform*

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

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act*

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We will be working with the tribes on

whose land where there is a possibility of Laguna Mountains skipper occupancy to more precisely determine the distribution of Laguna Mountains skipper habitat and occupancy, and management options. No Laguna Mountains skippers have been reported from Tribal lands. Therefore, no designation of critical habitat for the Laguna Mountains skipper has been proposed on Tribal lands.

#### References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor,

Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author(s)

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

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

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

#### PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for “Skipper, Laguna Mountains” under “INSECTS” to read as follows:

#### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species Common name	Historic range Scientific name	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
* INSECTS	*	*	*	*	*	*
* Skipper, Laguna Mountains.	* <i>Pyrgus ruralis lagunae</i> .	* U.S.A. ....	* Entire .....	* E	* 604	* 17.95(i) NA
*	*	*	*	*	*	*

3. In § 17.95(i), add the entry for Laguna Mountains Skipper (*Pyrgus ruralis lagunae*) under “INSECTS” to read as follows:

#### § 17.95 Critical habitat-fish and wildlife.

\* \* \* \* \*

(i) Insects.

\* \* \* \* \*

Laguna Mountains Skipper (*Pyrgus ruralis lagunae*)

(1) Critical habitat units are depicted for San Diego County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Laguna

Mountains skipper are the habitat components that provide:

(i) The host plants, *Horkelia clevelandii* or *Potentilla glandulosa*, in meadows or forest openings needed for reproduction.

(ii) Nectar sources suitable for feeding by adult Laguna Mountains skipper, including *Lasthenia* spp., *Pentachaeta aurea*, *Ranunculus* spp., and *Sidalcea* spp.

(iii) Wet soil or standing water associated with features such as seeps, springs, or creeks where water and minerals are obtained during the adult flight season.

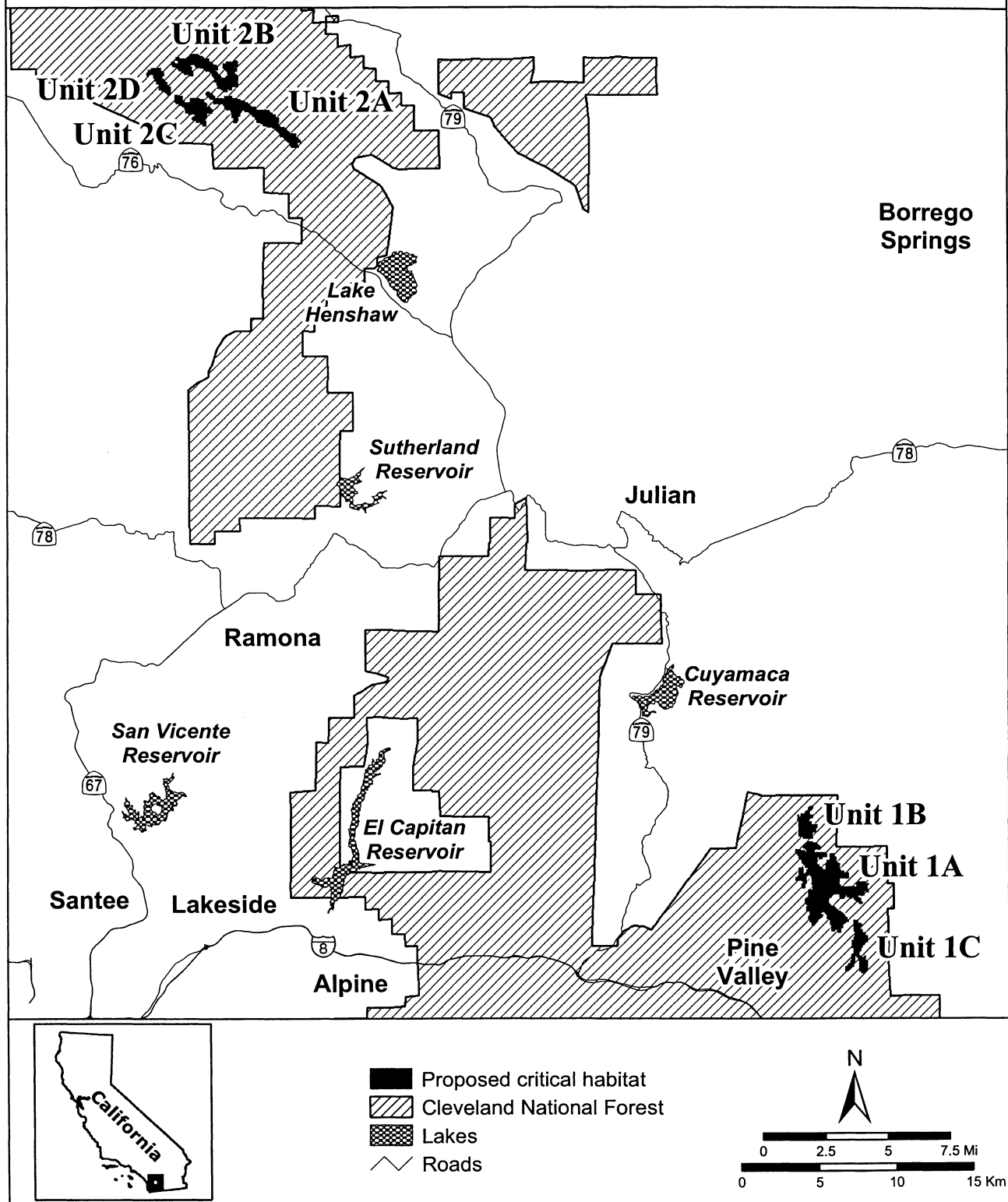
(3) Critical habitat does not include man-made structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(4) Data layers defining map units were created on a., on a base of USGS 1:24,000 quadrangle maps, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Map 1 (index map) follows.

**BILLING CODE 4310–55–U**

# Index of Proposed Critical Habitat Units for Laguna Mountains Skipper (*Pyrgus ruralis lagunae*), San Diego County, California



(i) Subunit 1A: lands bounded by the following UTM NAD27 coordinates (E,N): 553000, 3637800; 553000, 3638000; 553100, 3638000; 553100, 3638000; 553600, 3638100; 553600, 3638100; 553600, 3638000; 553800, 3638000; 553800, 3637900; 553700, 3637900; 553700, 3637600; 553800, 3637600; 553800, 3637400; 553700, 3637400; 553700, 3637500; 553500, 3637500; 553500, 3637200; 553100, 3637200; 553100, 3637100; 553200, 3637100; 553200, 3637000; 553300, 3637000; 553300, 3636800; 553400, 3636800; 553400, 3636700; 553200, 3636700; 553200, 3636800; 553000, 3636800; 552900, 3636900; 552900, 3636900; 552900, 3637000; 552800, 3637000; 552800, 3637100; 552700, 3637100; 552700, 3637000; 552600, 3637000; 552600, 3637100; 552400, 3637100; 552400, 3637200; 552300, 3637200; 552300, 3637100; 552200, 3637100; 552200, 3637000; 552000, 3637000; 552000, 3637100; 551900, 3637100; 551900, 3637300; 551500, 3637300; 551500, 3637200; 551400, 3637200; 551400, 3637100; 551200, 3637100; 551200, 3636700; 551300, 3636700; 551300, 3636600; 551400, 3636600; 551400, 3636500; 551600, 3636500; 551600, 3636400; 551700, 3636400; 551700, 3636300; 551800, 3636300; 551800, 3636200; 552000, 3636200; 552000, 3636100; 552100, 3636100; 552100, 3636000; 552200, 3636000; 552200, 3635900; 552300, 3635900; 552300, 3635800; 552400, 3635800; 552400, 3635600; 552500, 3635600; 552500, 3635500; 552300, 3635500; 552300, 3635400; 552100, 3635400; 552100, 3635100; 552000, 3635100; 552000, 3634800; 551800, 3634800; 551800, 3635000; 551600, 3635000; 551600, 3634900; 551400, 3634900; 551400, 3635300; 551300, 3635300; 551300, 3635600; 551200, 3635600; 551200, 3635700; 551100, 3635700; 551100, 3636000; 551000, 3636000; 551000, 3636100; 550900, 3636100; 550900, 3636200; 550800, 3636200; 550800, 3636100; 550700, 3636100; 550700, 3636000; 550800, 3636000; 550800, 3635800; 550600, 3635800; 550600, 3635700; 550500, 3635700; 550500, 3635500; 550400, 3635500; 550400, 3635400; 550300, 3635400; 550300, 3635300; 550100, 3635300; 550100, 3635500; 550000, 3635500; 550000, 3635600; 549900, 3635600; 549900, 3635900; 550000, 3635900; 550000, 3636200; 549800, 3636200; 549800, 3636500; 549900, 3636500; 549900, 3636600; 549800, 3636600; 549800, 3636700; 549700, 3636700; 549700, 3637000; 549800, 3637000; 549800,

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(ii) Subunit 1B: lands bounded by the following UTM NAD27 coordinates (E,N): 550000, 3643000; 550200, 3643000; 550200, 3642800; 550100, 3642800; 550100, 3642700; 550000, 3642700; 550000, 3642400; 550200, 3642400; 550200, 3642200; 550000, 3642200; 550000, 3642100; 549900, 3642100; 549900, 3642000; 550100, 3642000; 550100, 3642000; 550100, 3641800; 550500, 3641800; 550500, 3641600; 550400, 3641600; 550400, 3641300; 550200, 3641300; 550200, 3641200; 550100, 3641200; 550100, 3641100; 550200, 3641100; 550200, 3640900; 549600, 3640900; 549600, 3641000; 549300, 3641000; 549300, 3642000; 549200, 3642000; 549200, 3642400; 549300, 3642400; 549300, 3642300; 549400, 3642300; 549400, 3642500; 549700, 3642500; 549700, 3642600; 549800, 3642600; 549800, 3642700; 549900, 3642700; 549900, 3642900; 550000, 3642900; 550000, 3643000.

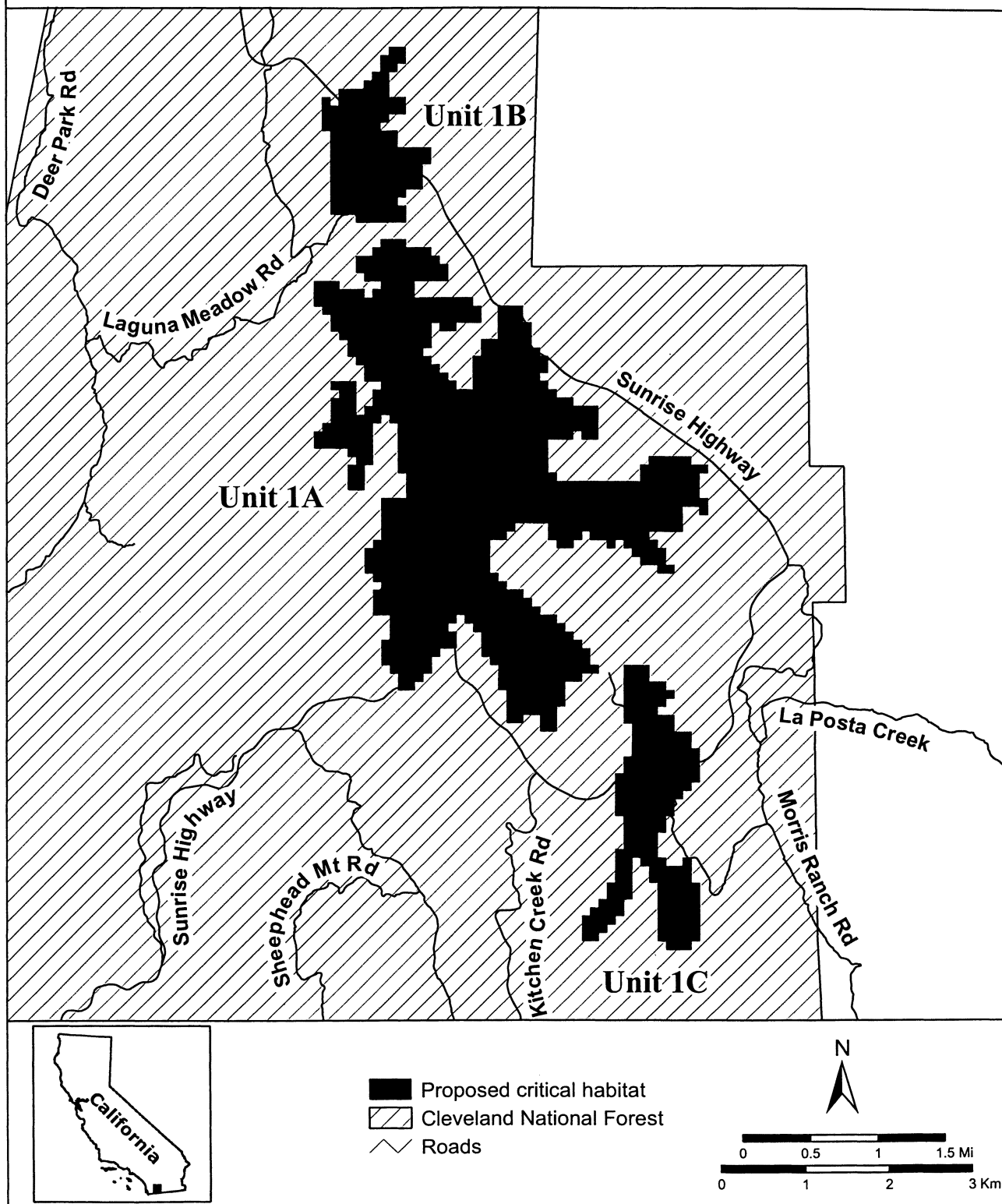
(iii) Subunit 1C: lands bounded by the following UTM NAD27 coordinates (E,N): 552800, 3635600; 553100, 3635600; 553100, 3635400; 553300, 3635400; 553300, 3635300; 553400, 3635300; 553400, 3635200; 553300, 3635200; 553300, 3635100; 553200, 3635100; 553200, 3635000; 553400, 3635000; 553400, 3634800; 553600, 3634800; 553600, 3634600; 553700, 3634600; 553700, 3634200; 553600, 3634200; 553500, 3634200; 553500, 3634100; 553500, 3634100; 553500, 3634000; 553400, 3634000; 553400, 3633800; 553300, 3633800; 553300, 3633600; 553200, 3633600; 553200, 3633300; 553300, 3633300; 553300, 3633200; 553500, 3633200; 553500, 3633300; 553600, 3633300; 553600, 3633000; 553700, 3633000; 553700, 3632300; 553600, 3632300; 553600, 3632300; 553600, 3632200; 553300, 3632200; 553200, 3632200; 553200, 3632300; 553200, 3633000; 553100, 3633000; 553100, 3633200; 553000, 3633200; 553000, 3633300; 552900, 3633300; 552900, 3632800; 552800, 3632800; 552800, 3632600; 552700, 3632600; 552700, 3632500; 552600, 3632500; 552600, 3632400; 552500, 3632400; 552500, 3632300; 552300, 3632300; 552300, 3632600; 552400, 3632600; 552400, 3632700; 552500, 3632700; 552500, 3632800; 552600, 3632800; 552600, 3633000; 552700, 3633000; 552700, 3633400; 552800, 3633400; 552800, 3633800; 552700, 3633800; 552700, 3634300; 552800, 3634300; 552800, 3634500; 552900, 3634500; 552900, 3634900; 552800, 3634900; 552800, 3635600.

(iv) Note: Unit 1 (Map 2) follows.

BILLING CODE 4310-55-U



Proposed Critical Habitat for Laguna Mountains Skipper (*Pyrgus ruralis lagunae*)  
Unit 1: Laguna Mountain, San Diego County, California



(i) Subunit 2A: lands bounded by the following UTM NAD27 coordinates (E, N): 511300, 3689300; 511400, 3689300;

511400, 3689200; 511600, 3689200; 511600, 3689100; 511700, 3689100; 511700, 3689000; 511800, 3689000; 511800, 3688900; 512300, 3688900; 512300, 3688800; 512400, 3688800; 512400, 3689000; 512900, 3689000; 512900, 3688900; 513200, 3688900; 513200, 3688800; 513400, 3688800; 513400, 3688700; 513700, 3688700; 513700, 3688600; 513900, 3688600; 513900, 3688500; 514000, 3688500; 514000, 3688400; 514100, 3688400; 514100, 3688300; 514400, 3688300; 514400, 3688200; 514500, 3688200; 514500, 3688100; 515300, 3688100; 515300, 3688000; 515400, 3688000; 515400, 3687900; 515500, 3687900; 515500, 3687800; 515700, 3687800; 515700, 3687600; 515900, 3687600; 515900, 3687300; 515800, 3687300; 515800, 3687200; 515900, 3687200; 515900, 3687100; 516000, 3687100; 516000, 3687000; 516300, 3687000; 516300, 3686900; 516400, 3686900; 516400, 3686800; 516500, 3686800; 516500, 3686700; 516600, 3686700; 516600, 3686600; 517000, 3686600; 517000, 3686300; 517200, 3686300; 517200, 3686200; 517300, 3686200; 517300, 3686000; 517100, 3686000; 517100, 3685800; 517200, 3685800; 517200, 3685700; 516700, 3685700; 516700, 3685800; 516600, 3685800; 516600, 3686000; 516500, 3686000; 516400, 3686100; 516400, 3686100; 516400, 3686200; 516300, 3686200; 516300, 3686300; 516200, 3686400; 516000, 3686400; 516000, 3686600; 515900, 3686600; 515900, 3686700; 515800, 3686700; 515800, 3686800; 515700, 3686800; 515700, 3686900; 515500, 3686900; 515500, 3687000; 515200, 3687000; 515200, 3687100; 514900, 3687100; 514900, 3687200; 514800, 3687200; 514800, 3687300; 514500, 3687300; 514500, 3687500; 514400, 3687500; 514400, 3687600; 514300, 3687600; 514300, 3687700; 514200, 3687700; 514200, 3687800; 514100, 3687800; 514100, 3687900; 514000, 3687900; 514000, 3688000; 513700, 3688000; 513700, 3688100; 513500, 3688100; 513500, 3688000; 513400, 3688000; 513400, 3687700; 513300, 3687700; 513200, 3687400; 513200, 3687400; 513200, 3687300; 513000, 3687300; 512900, 3687600; 512900, 3687600; 512900, 3688000; 512800, 3688000; 512800, 3688100; 512500, 3688100; 512500, 3688200; 512400, 3688200; 512300, 3688400; 512300, 3688400; 512300, 3688500; 512000, 3688500; 511900, 3688600; 511900, 3688500;

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(ii) Subunit 2B: lands bounded by the following UTM NAD27 coordinates

(E,N): 513000, 3690900; 513000, 3690800; 513200, 3690800; 513200, 3690600; 513100, 3690600; 513100, 3690400; 513200, 3690400; 513200, 3690300; 513300, 3690300; 513300, 3690000; 513200, 3690000; 513200, 3689900; 513300, 3689900; 513300, 3689600; 512900, 3689600; 512900, 3689400; 512700, 3689400; 512700, 3689500; 512600, 3689500; 512600, 3689300; 512300, 3689300; 512300, 3689400; 512200, 3689400; 512200, 3689500; 512000, 3689500; 512000, 3689700; 511900, 3689700; 511900, 3689900; 511800, 3689900; 511800, 3690200; 511700, 3690200; 511700, 3690300; 511600, 3690300; 511600, 3690500; 511500, 3690500; 511500, 3690600; 511200, 3690600; 511200, 3690700; 511100, 3690700; 511000, 3690800; 510800, 3690800; 510800, 3690900; 510700, 3690900; 510700, 3690800; 510600, 3690800; 510600, 3690900; 510500, 3690900; 510500, 3691000; 510200, 3691000; 510200, 3690900; 510300, 3690900; 510300, 3690600; 510400, 3690600; 510400, 3690300; 510200, 3690300; 510200, 3690400; 509800, 3690400; 509800, 3690500; 509700, 3690500; 509700, 3690600; 509500, 3690600; 509500, 3690700; 509400, 3690700; 509400, 3690800; 509300, 3690800; 509300, 3690900; 509100, 3690900; 509100, 3691000; 509000, 3691000; 509000, 3691200; 509200, 3691200; 509200, 3691100; 509400, 3691100; 509400, 3691300; 509300, 3691300; 509300, 3691500; 509500, 3691500; 509500, 3691400; 510000, 3691400; 510000, 3691500; 510100, 3691500; 510100, 3691600; 510200, 3691600; 510200, 3691700; 510700, 3691700; 510700, 3691600; 511000, 3691600; 511000, 3691500; 511100, 3691500; 511100, 3691400; 511400, 3691400; 511400, 3691200; 511600, 3691200; 511600, 3691100; 511700, 3691100; 511700, 3691000; 511900, 3691000; 511900, 3690900; 512000, 3690900; 512000, 3690700; 511800, 3690700; 511800, 3690600; 511900, 3690600; 511900, 3690500; 512000, 3690500; 512000, 3690400; 512100, 3690400; 512100, 3690300; 512200, 3690300; 512200, 3690200; 512500, 3690200; 512500, 3690300; 512700, 3690300; 512700, 3690400; 512600, 3690400; 512600, 3690600; 512500, 3690600; 512500, 3690700; 512400, 3690700; 512400,

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(iii) Subunit 2C: lands bounded by the following UTM NAD27 coordinates (E, N): 509200, 3689100; 509400, 3689100;

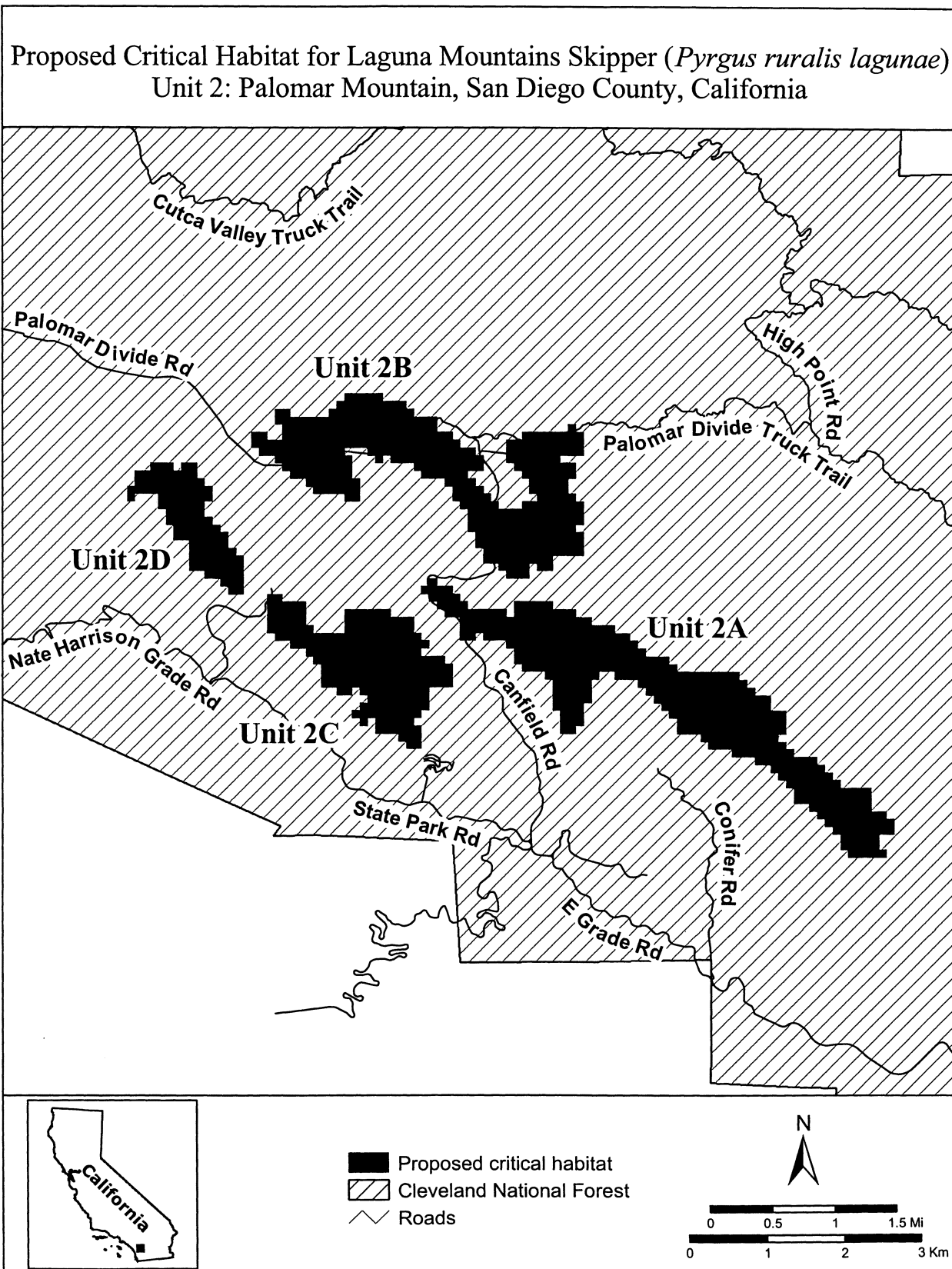
509400, 3689000; 509700, 3689000; 509700, 3688700; 509800, 3688700; 509800, 3688600; 510200, 3688600; 510200, 3688900; 510800, 3688900; 510800, 3688800; 511100, 3688800; 511100, 3688600; 511200, 3688600; 511200, 3688500; 511300, 3688500; 511300, 3688400; 511200, 3688400; 511200, 3688300; 511500, 3688300; 511500, 3688200; 511600, 3688200; 511600, 3687900; 511300, 3687900; 511300, 3687600; 511200, 3687600; 511200, 3687500; 511100, 3687500; 511100, 3687400; 511200, 3687400; 511200, 3687100; 511000, 3687100; 511000, 3687200; 510900, 3687200; 510900, 3687300; 510600, 3687300; 510600, 3687500; 510500, 3687500; 510500, 3687400; 510400, 3687400; 510400, 3687500; 510300, 3687500; 510400, 3687600; 510400, 3687700; 510500, 3687700; 510500, 3687800; 510400, 3687800; 510400, 3687900; 510300, 3687900; 510300, 3687800; 510100, 3687800; 510100, 3687900; 509900, 3687900; 509900, 3688200; 509800, 3688200; 509800, 3688300; 509700, 3688300; 509700, 3688400; 509500, 3688400; 509500, 3688500; 509300, 3688500; 509300, 3688600; 509200, 3688600; 509200, 3689100.

(iv) Subunit 2D: lands bounded by the following UTM NAD27 coordinates (E,N): 507700, 3690800; 508000,

3690800; 508000, 3690700; 508100, 3690700; 508100, 3690800; 508300, 3690800; 508300, 3690600; 508400, 3690600; 508400, 3690500; 508500, 3690500; 508500, 3690300; 508400, 3690300; 508400, 3690100; 508500, 3690100; 508500, 3690000; 508600, 3690000; 508600, 3689900; 508700, 3689900; 508700, 3689700; 508800, 3689700; 508800, 3689600; 508900, 3689600; 508900, 3689100; 508700, 3689100; 508700, 3689200; 508600, 3689200; 508600, 3689300; 508400, 3689300; 508200, 3689400; 508200, 3689800; 508000, 3689800; 508000, 3690000; 507900, 3690000; 507900, 3690200; 507800,

3690200; 507800, 3690400; 507500,  
3690400; 507500, 3690300; 507400,  
3690300; 507400, 3690500; 507500,

3690500; 507500, 3690700; 507700,  
3690700; 507700, 3690800.  
(v) **Note:** Unit 2 (Map 3) follows.



\* \* \* \* \*

Dated: November 30, 2005.

**Craig Manson,***Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-23691 Filed 12-12-05; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 697**

[Docket No. 051129315-5315-01; I.D. 112505A]

RIN 0648-AU07

**Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery****AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS announces that it is considering, and seeking public comment on the implementation of further minimum carapace length (gauge) increases and escape vent size increases in the Federal lobster fishery, consistent with recommendations for Federal action in the Atlantic States Marine Fisheries Commission's (Commission) Interstate Fishery Management Plan for American Lobster (ISFMP). NMFS would issue these regulations according to its authority under the Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA). While a September 2, 2005, proposed rule considered gauge increases and escape vent size increases as scheduled through 2004 in Addenda II and III to Amendment 3 of the ISFMP, the proposed rule did not address; additional gauge increases scheduled annually from 2005 through 2008 in Lobster Conservation Management Areas (LCMA) 3 and the Outer Cape Lobster Conservation Management Area (OCLCMA), an increase to the escape vent size in LCMA 3 and the OCLCMA scheduled for 2008, and an escape vent size increase for LCMA 1 scheduled for 2007. Accordingly, NMFS is seeking written public comments on these additional gauge and escape vent size requirements as set forth in the ISFMP and recommended for Federal implementation by the Commission.

**DATES:** Comments must be received by January 12, 2006.

**ADDRESSES:** Written comments should be sent to Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930. Comments may also be sent via e-mail to [Lob1205@noaa.gov](mailto:Lob1205@noaa.gov), via fax (978) 281-9117 or via the Federal e-Rulemaking portal at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** Peter Burns, Fishery Management Specialist, (978) 281-9144, fax (978) 281-9117, e-mail [peter.burns@noaa.gov](mailto:peter.burns@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Addenda II through VII are part of an overall lobster fishery management regime set forth in Amendment 3 to the ISFMP. The intent of Amendment 3, approved by the Commission in December 1997, is to achieve a healthy American lobster resource and to develop a management regime that provides for sustained harvest, maintains opportunities for participation, and provides for the cooperative development of conservation measures by all stakeholders. In short, Amendment 3 was envisioned to provide much of the framework upon which future lobster management - to be set forth in later addenda - would be based. In particular, Amendment 3 employed a participatory management approach by creating the seven lobster management areas, each with its own lobster conservation management team (LCMT) comprised of industry members. Amendment 3 tasked the LCMTs with providing recommendations for area-specific management measures to the Commission's Lobster Management Board (Board) to meet the lobster egg production and effort reduction goals of the ISFMP. NMFS has the authority under the ACFCMA to implement regulations in Federal waters that are compatible with the effective implementation of the ISFMP and consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act. These Federal regulations are promulgated pursuant to the ACFCMA and are codified at 50 CFR part 697.

Commission Addendum 1 to Amendment 3 focused largely on effort control measures. The Commission approved Addendum 1 in August 1999, with NMFS promulgating compatible regulations on March 27, 2003 (68 FR 14902). The Board approved the egg production measures as Addenda II and III in February 2001, and February 2002, respectively, and recommended that NMFS implement complementary

Federal regulations. NMFS began a rulemaking in response to these addenda, and most recently published a proposed rule on September 2, 2005 (70 FR 52346). In December 2003, the Board approved Addendum IV which, in part, included additional egg production measures. Addenda V and VI did not include any further measures pertinent to egg production and, therefore, are not included within the scope of this advance notice of proposed rulemaking (ANPR). Addendum VII, approved by the Board in November 2005, facilitates effort control measures and constitutes a limited access program for the lobster trap fishery in the state waters of LCMA 2 based on historical participation. In approving Addendum VII, the Board opted not to continue with the previously adopted schedule of minimum carapace length increases in LCMA 2 (Addendum III) and voted to maintain the minimum legal carapace length (gauge) at 3 3/8 inches (8.57 centimeters (cm)). This option allows the Board to adjust the minimum gauge size in the future pending new stock assessment results and changes to the plan addenda or amendments.

**ISFMP Measures Already Analyzed and Proposed by NMFS**

The American lobster egg production and broodstock protection measures in the collective addenda include annual minimum gauge size increases, lobster trap escape vent size increases, maximum carapace size restrictions and v-notch protection. Many of these measures in the collective addenda were already analyzed and proposed for implementation by NMFS in the September 2, 2005, proposed rule. These include: maximum carapace length restrictions for LCMAs 4 and 5; mandatory v-notching of egg-bearing female lobsters in LCMA 1 and the portion of LCMA 3 that lies north of the 42°30' N. latitude line; a zero tolerance definition of v-notched female lobster in LCMA 1; minimum gauge size increases to 3 3/8 inches (8.57 cm) in LCMAs 2, 3, 4, 5 and the OCLCMA; and lobster trap escape vent size increases to 2 inches X 5 3/4 inches rectangular (5.08 cm X 14.61 cm) and 2 5/8 inches (6.67 cm) diameter circular in LCMAs 2, 3, 4, 5 and the OCLCMA.

Additional minimum gauge increases and escape vent size increases are included in the addenda but were not addressed in the September 2, 2005, proposed rule because the entire gauge increase schedule, although included in the approved Commission addenda, had not actually occurred at the time of analysis for corresponding changes to the Federal rules. In other words, the