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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R2–ES–2012–0063]**

**[4500030114]**

**RIN 1018–AY24**

### **Endangered and Threatened Wildlife and Plants; Endangered Status and Designation of Critical Habitat for the Jemez Mountains Salamander**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the September 12, 2012, proposed endangered status for the Jemez Mountains salamander and proposed designation of critical habitat under the

Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis and draft environmental assessment of the proposed designation of critical habitat for the Jemez Mountains salamander, and an amended required determinations section of the proposal. We are proposing minor amendments to the proposed critical habitat units based on updated mapping data. In addition, we are proposing minor changes to clarify the primary constituent elements. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis and draft environmental assessment, the amended required determinations section, and the proposed changes to the primary constituent elements and critical habitat units described in this document. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received on or before [INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS–R2–ES–2012–0063, and submit comments on the critical habitat proposal and

associated draft economic analysis to Docket No. FWS–R2–ES–2013–0005. See SUPPLEMENTARY INFORMATION for an explanation of the two dockets.

(2) *By hard copy*: Submit comments on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0063; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comment on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0005; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Wally Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, NM 87113; by telephone 505–346–2525; or by facsimile 505–346–2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

## **SUPPLEMENTARY INFORMATION:**

### **Public Comments**

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the Jemez Mountains salamander (*Plethodon neomexicanus*) that was published in the **Federal Register** on September 12, 2012 (77 FR 56482), our draft economic analysis and draft environmental assessment of the proposed designation, the amended required determinations provided in this document, and the proposed changes to the primary constituent elements and critical habitat units described in this document. We will consider information and recommendations from all interested parties.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the Jemez Mountains salamander. The final listing rule will publish under the existing docket number, FWS–R2–ES–2012–0063, and the final critical habitat designation will publish under docket number FWS–R2–ES–2013–0005.

We will publish two separate rules because we are basically engaging in two separate rulemaking actions. The Secretary of the Interior has delegated authority to the Director of the Service to make determinations regarding listing species under the Act,

which the Act requires to be based entirely on science. However, in making critical habitat designations, the Act requires that we consider economic implications as well as science, and, therefore, these rules are subject to a higher level of governmental review and signature. In addition, as the result of a 2011 settlement agreement for a multidistrict lawsuit regarding the listing process, we must publish numerous rulemaking documents on a prescribed schedule until 2017, and dividing this rulemaking action into two separate rules will help us adhere to this schedule.

We request that you provide comments specifically on our listing determination under the existing docket number FWS–R2–ES–2012–0063. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

We request that you provide comments specifically on the critical habitat determination under docket number FWS–R2–ES–2013–0005. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of Jemez Mountains salamander habitat;

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of

climate change; and

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

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

(8) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

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

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

(11) 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 submitted comments or information on the proposed rule (77 FR 56482; September 12, 2012) during the initial comment period from September 12, 2012, to November 13, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final rules.

You may submit your comments and materials concerning the September 12, 2012, proposed rule, the draft economic analysis, the draft environmental assessment, the amended required determinations provided in this document, or the proposed changes to the primary constituent elements and critical habitat units described in this document by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0063 (for the proposed listing rule) and Docket No. FWS-R2-ES-2013-0005 (for the proposed critical habitat designation and draft economic analysis), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0063 and the draft economic analysis at Docket No. FWS-R2-ES-2013-0005, or by mail from the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## **Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Jemez Mountains salamander in this document. For more information on previous Federal actions concerning the Jemez Mountains salamander, or for more information on the Jemez Mountains salamander or its habitat, refer to the proposed endangered status for the Jemez Mountains salamander and proposed designation of critical habitat published in the **Federal Register** on September 12, 2012 (77 FR 56482), which is available online at <http://www.regulations.gov> (at Docket Number FWS-R2-ES-2012-0063) or from the New Mexico Ecological Services Field

Office (see **FOR FURTHER INFORMATION CONTACT**).

On September 12, 2012 (77 FR 56482), we published a proposed rule to list and designate critical habitat for the Jemez Mountains salamander. We proposed to designate approximately 90,789 acres (ac) (36,741 hectares (ha)) in two units located in Los Alamos, Rio Arriba, and Sandoval Counties, New Mexico, as critical habitat. That proposal had a 60-day comment period ending November 13, 2012. We will submit for publication in the **Federal Register** a final listing and a critical habitat designation for the Jemez Mountains salamander on or before September 12, 2013.

#### *Critical Habitat*

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

## **Changes from the Previously Proposed Critical Habitat Designation**

### *Amended Primary Constituent Elements (PCEs) for the Jemez Mountains Salamander*

We are proposing to amend the PCEs that we proposed in our September 12, 2012, proposed rule (77 FR 56482) to provide additional clarification to PCEs 1 and 3a. The overall intent of proposed PCEs has not changed. Based on the needs and our current knowledge of the life history, biology, and ecology of the species, and the habitat requirements for sustaining the essential life-history functions of the species, we have determined that, in total, the PCEs essential to the conservation of the Jemez Mountains salamander are:

(1) Moderate to high tree canopy cover, typically 50 to 100 percent canopy closure, that provides shade and maintains moisture and high relative humidity at the ground surface, and:

(a) Consists of the following tree species alone or in any combination:

Douglas fir (*Pseudotsuga menziesii*); blue spruce (*Picea pungens*); Engelman spruce (*Picea engelmannii*); white fir (*Abies concolor*); limber pine (*Pinus flexilis*); ponderosa pine (*Pinus ponderosa*); and aspen (*Populus tremuloides*); and

(b) Has an understory that predominantly comprises: Rocky Mountain maple (*Acer glabrum*); New Mexico locust (*Robinia neomexicana*); oceanspray (*Holodiscus* sp.); or shrubby oaks (*Quercus* spp.).

(2) Elevations from 6,988 to 11,254 feet (2,130 to 3,430 meters).

(3) Ground surface in forest areas with:

(a) Moderate to high volumes of large fallen trees and other woody debris, especially coniferous logs at least 10 inches (25 centimeters) in diameter, particularly Douglas fir, which are in contact with the soil in varying stages of decay from freshly fallen to nearly fully decomposed; or

(b) Structural features, such as rocks, bark, and moss mats that provide the species with food and cover.

(4) Underground habitat in forest or meadow areas containing interstitial spaces provided by:

(a) Igneous rock with fractures or loose rocky soils;

(b) Rotted tree root channels; or

(c) Burrows of rodents or large invertebrates.

*Amended Proposed Critical Habitat Units*

In this publication, we are proposing to revise the size of the two previously proposed critical habitat units, based on recently finalized map data that were still in draft form during our initial analysis. The updated map data resulted in minor changes in size and ownership in both proposed units. There is a slight reduction in the overall area proposed, with some reduction of private lands and addition of a small parcel of State lands. In the September 12, 2012 (77 FR 56482), proposed rule, we proposed a total of approximately 90,789 ac (36,741 ha) in two units. Based on new map data, we are updating the approximate area and land ownership of both proposed critical habitat units; the updates are shown in Table 1. The total Federal proposed critical habitat consists of 56,897 ac (23,025 ha) of U.S. Forest Service lands, 23,745 ac (9,609 ha) of Valles Caldera National Preserve lands, and 7,198 ac (2,913 ha) of National Park Service lands. Also, we identified a 73-ac (30-ha) parcel owned by New Mexico Department of Game and Fish in the Western Jemez Mountains Unit. Based on these revisions, we are now proposing a total of approximately 90,716 ac (36,711 ha) in two critical habitat units, which is 73 ac (30 ha) less than what we previously proposed. Such a small change in the acreage does not affect the accuracy of the maps published in the September 12, 2012 (77 FR 56482), proposed rule.

TABLE 1. Proposed critical habitat units for the Jemez Mountains salamander.

Critical Habitat Unit	Land Ownership by Type	Size of Unit in Acres (Hectares)
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1. Western Jemez Mountains Unit	Federal	41,466 (16,781)
	Private	906 (367)
	State	73 (30)
	Total Unit 1	42,445 (17,177)
2. Southeastern Jemez Mountains Unit	Federal	46,374 (18,767)
	Private	1,897 (768)
	Total Unit 2	48,271 (19,535)
Total	Federal	87,840 (35,548)
	Private	2,803 (1,134)
	State	73 (30)
	Total	90,716 (36,711)

Note: Area sizes may not sum due to rounding.

### **Consideration of Impacts under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any

particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

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

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis and draft environmental assessment concerning the proposed critical habitat designation, which are available for review and comment (see

**ADDRESSES** section).

*Draft Economic Analysis*

The purpose of the draft economic analysis is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Jemez Mountains salamander. The draft economic analysis describes the economic impacts of all potential conservation efforts for the Jemez Mountains salamander; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis forecasts both baseline and

incremental impacts likely to occur if we finalize the proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, “FRAMEWORK FOR THE ANALYSIS,” of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Jemez Mountains salamander over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The draft economic analysis quantifies economic impacts of Jemez Mountains salamander conservation efforts associated with the following categories of activity: (1) Severe wildland fire, (2) fire management, (3) other Federal land management, (4) private development, (5) transportation, and (6) livestock grazing. Economic impacts are estimated for severe wildland fire, fire management, other Federal land management, livestock grazing, and transportation. No impacts are forecast for private development, because no projects with a Federal nexus were identified within the study area.

Total present value incremental impacts are approximately \$260,000 over 20 years following the designation, assuming a 7 percent discount rate (\$330,000 assuming a 3 percent discount rate). All incremental costs are administrative in nature and result

from the consideration of adverse modification in section 7 consultations. Both proposed units are expected to experience similar levels of incremental impact. Differences in forecast impacts across the two units are predominately a result of the distribution of land ownership, rather than differences in activities across units.

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

#### *Draft Environmental Assessment*

The purpose of the draft environmental assessment, prepared under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the Jemez Mountains salamander. In the draft environmental assessment, two alternatives are evaluated: Alternative A, the proposed rule, and the no action alternative. Under Alternative A, critical habitat units on private and other lands could potentially be excluded in the final rule based on economic impact, national security, or other relevant

impacts. We did not propose exclusion of private or any other lands. Alternative A is the current proposal, and the no action alternative is equivalent to no designation of critical habitat for the Jemez Mountains salamander. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment. Our preliminary determination is that designation of critical habitat for the Jemez Mountains salamander will not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

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

### **Required Determinations—Amended**

In our September 12, 2012, proposed rule (77 FR 56482), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule

concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the draft economic analysis data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

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

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

economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

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

To determine if the proposed designation of critical habitat for the Jemez

Jemez Mountains salamander would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as fire management, private development, transportation, and livestock grazing. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Jemez Mountains salamander is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Jemez Mountains salamander. The designation of critical habitat for the salamander is unlikely to directly affect any small entities. Ninety-seven percent of land in the designation is Federally owned. Anticipated incremental impacts in proposed critical habitat are primarily related to consultations on

fire management and other Federal land management activities (comprising approximately 99 percent of the annual anticipated incremental costs of the designation). The remaining forecast impacts are anticipated to be conducted for road and highway maintenance projects. Little to no impact to third parties is expected associated with these activities. For this reason, there would be little to no impacts to small entities as a result of critical habitat designation for the salamander. Please refer to the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Jemez Mountains salamander

in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this proposed designation of critical habitat does not pose significant takings implications for lands within or affected by the designation. However, we will further evaluate this issue as we complete our final economic analysis, and review and revise this assessment as appropriate.

*National Environmental Policy Act (NEPA)*

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

environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Jemez Mountains salamander. Our preliminary determination is that the designation of critical habitat for the Jemez Mountains salamander would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

### **Authors**

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

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

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

### **Proposed Regulation Promulgation**

Accordingly, we propose to further amend the proposed amendments to part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as published on September 12, 2012, at 77 FR 56482, 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 § 17.95(d), in the proposed entry for “Jemez Mountains Salamander (*Plethodon neomexicanus*)”, as published at 77 FR 56482, revise proposed paragraph (d)(2) to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(d) *Amphibians.*

\* \* \* \* \*

Jemez Mountains Salamander (*Plethodon neomexicanus*)

\* \* \* \* \*

(2) Within these areas, the primary constituent elements of the physical or

biological features essential to the conservation of the Jemez Mountains salamander consist of four components:

(i) Moderate to high tree canopy cover, typically 50 to 100 percent canopy closure, that provides shade and maintains moisture and high relative humidity at the ground surface, and:

(A) Consists of the following tree species alone or in any combination:

Douglas fir (*Pseudotsuga menziesii*); blue spruce (*Picea pungens*); Engelman spruce (*Picea engelmannii*); white fir (*Abies concolor*); limber pine (*Pinus flexilis*); ponderosa pine (*Pinus ponderosa*); and aspen (*Populus tremuloides*); and

(B) Has an understory that predominantly comprises: Rocky Mountain maple (*Acer glabrum*); New Mexico locust (*Robinia neomexicana*); oceanspray (*Holodiscus* sp.); or shrubby oaks (*Quercus* spp.).

(ii) Elevations from 6,988 to 11,254 feet (2,130 to 3,430 meters).

(iii) Ground surface in forest areas with:

(A) Moderate to high volumes of large fallen trees and other woody debris, especially coniferous logs at least 10 inches (25 centimeters) in diameter, particularly Douglas fir, which are in contact with the soil in varying stages of decay from freshly fallen to nearly fully decomposed; or

(B) Structural features, such as rocks, bark, and moss mats that provide the species with food and cover.

(iv) Underground habitat in forest or meadow areas containing interstitial spaces provided by:

(A) Igneous rock with fractures or loose rocky soils;

(B) Rotted tree root channels; or

(C) Burrows of rodents or large invertebrates.

\* \* \* \* \*

Date: February 1, 2013

Michael J. Bean

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and  
Parks

**Billing Code 4310-55**

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