

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AU78

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Guajón (*Eleutherodactylus cooki*)**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 threatened guajón (*Eleutherodactylus cooki*), a frog endemic to Puerto Rico, under the Endangered Species Act of 1973, as amended (Act). In total, approximately 217.2 acres (ac) (88 hectares (ha)) fall within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in the municipalities of Humacao, Las Piedras, Maunabo, Patillas, and Yabucoa, Puerto Rico.

DATES: We will accept comments from all interested parties until December 4, 2006. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by November 20, 2006.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to Edwin E. Muñoz, Field Supervisor, U.S. Fish and Wildlife Service, Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622.
2. You may hand-deliver written comments to us at the following address: Cabo Rojo National Wildlife Refuge Visitor Center, Ecological Services Field Office, PR-301, km. 5.1, Boquerón, Puerto Rico.
3. You may send comments by electronic mail (e-mail) to jorge_saliva@fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.
4. You may fax your comments to 787-851-7440.
5. You may submit comments via the Federal Rulemaking portal at www.regulations.gov. Follow the instructions on the site 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 Boquerón Field Office, Road 301 km. 5.1, Boquerón Ward (telephone 787-851-7297).

FOR FURTHER INFORMATION CONTACT:

Jorge E. Saliva, Ph.D., Boquerón Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622 (telephone 787-851-7297 x224; facsimile (787-851-7440).

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 for the guajón as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et. seq.*), including whether it is prudent to designate critical habitat;
- (2) Specific information on the amount and distribution of guajón habitat, and what areas should be included in the designation that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why, and what areas that were not occupied at the time of 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;
- (5) Whether the benefit of exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act; and
- (6) 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** section). Please submit Internet comments to jorge_saliva@fws.gov in ASCII file format and avoid the use of special characters or any form of

encryption. Please also include "Attn: guajón proposed rule" 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 Boquerón Field Office at telephone number (787) 851-7297.

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 names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of 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 address in the **ADDRESSES** section.

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 ESA section 4(b)(2), there are significant limitations on the regulatory effect of designation under ESA section 7(a)(2). 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 470 species or 37 percent of the 1,264 listed species in the United States under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,264 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, non-regulatory 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. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004). 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. Rather, it relies on the guidance issued by the Director in response to the *Gifford Pinchot* decision (see "Adverse Modification Standard" discussion below). 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; 42 U.S.C. 4321 *et seq.*). These costs, which

are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

Background

In this proposed rule, we intend to discuss only those topics directly relevant to the designation of critical habitat. For more information on the guajón (which is also known as the Puerto Rican demon), refer to the final listing rule published in the **Federal Register** on June 11, 1997 (62 FR 31757).

The guajón is a petricolous (*i.e.*, inhabiting rocks) frog species endemic to the southeastern part of Puerto Rico. This species is one of 16 species of the genus *Eleutherodactylus*, commonly known as "coquiés," that inhabit the island. It is the second largest species of *Eleutherodactylus* in Puerto Rico. The guajón has solid brown dorsal coloration, white-rimmed eyes, and large, truncate (*i.e.*, partially cut) disks on its feet (Rivero 1998, p. 13; Joglar 1986, p. 386). The species exhibits sexual dimorphism (separate female and male forms) in size, vocalization, and coloration (Burrowes 2000, pp. 376, 380; Burrowes 1997, p. 26). Females are larger than males. The mean size (snout-vent length) for females is 2.01 inches (in) (50.94 millimeters (mm)) and for males is 1.71 in (43.43 mm). The ventral coloration of females is uniformly white, while males are yellow extending from the vocal sac to the abdomen and flanks. Males call for mates by producing 3 to 7 similar notes (Drewry and Rand 1983, p. 944). Females produce only a short, acute call when distressed (Burrowes 2000, p. 383). Juveniles are brown in color with a dorsal pattern of dark brown inverted parentheses (Joglar *et al.* 1996, p. 254; Joglar 1998, p. 68).

The guajón was thought to be limited in distribution by the presence of caves, grottoes, and rock formations (Rivero 1998, p. 13; Joglar 1998, p. 62). At the time of listing in 1997 (62 FR 31757), the guajón was known to be found in the Cuchilla de Panduras mountain range (municipalities of Maunabo, San Lorenzo, and Yabucoa), and in the municipalities of Patillas, Humacao, and Las Piedras (Moreno 1991, p. 9; Joglar 1992, p. 40; Joglar *et al.* 1996, p. 253; F. Bird, pers. comm. 1995; C. Ruiz-Lebrón, pers. comm. 2006). For many years, the guajón was believed to be a highly localized species that occurred exclusively inside caves (Joglar 1998, pp. 62, 71; Joglar *et al.* 1996, p. 256; Burrowes 1997, p. 6; Burrowes 2000, p. 376), but additional habitat studies of this species (Vega-Castillo 2000, pp. 36–37, 40) have shown that the guajón also

lives in rocky streams. Since listing, we have discovered additional populations in three areas: (1) In Tejas Ward (Las Piedras) in an area bounded by Road PR-905 to the east, Road PR-908 to the west, Road PR-9921 to the north, and Road PR-9904 to the south; (2) in Guayabota Ward (Yabucoa) in an area south of Road PR-900 and north of the Maunabo boundary; and (3) within Guayabota Ward (Yabucoa), in an area that crosses Road PR-900 north of the Maunabo boundary, and is about 3,000 ft (900 m) west of proposed critical habitat Unit 11.

The guajón is found at low and intermediate elevations where it inhabits caves formed by large boulders of granite rock, and associated streams with patches of rock without cave systems (Burrowes and Joglar 1999, p. 706; Vega-Castillo 2000, p. 35; C. Ruiz-Lebrón, pers. comm., 2006). Structurally, the caves are complex, having several chambers of irregular shape and size, and may be at different depths between the surface of the ground and stream (Burrowes 2000, p. 376). The ecological conditions of the caves are relatively uniform; mean temperature and relative humidity are the same at any given month of the year, and they do not have thermal stratification (*i.e.*, no marked temperature differences between the floor and ceiling of the cave) (Rogowitz *et al.* 1999, p. 179; Rogowitz *et al.* 2001, pp. 542, 545; Burrowes 1997, p. 74). Like most of the *Eleutherodactylus*, the guajón has direct development of eggs, which are laid on humid boulders within grottoes and on cracks, depressions, or flat vertical surfaces (Joglar *et al.* 1996, p. 253; Burrowes 1997, pp. 21–22). The preference for this type of microhabitat probably reduces evaporative water loss and egg predation (Joglar 1998, pp. 64, 68).

Vega-Castillo (2000, p. 36, 40) reported that, in streams, the guajón has been found only in patches of rock in the streambed. The streams can be perennial or they can be ephemeral, formed during heavy rain; the streams are also surrounded by secondary forest. Rocks in the streambed form crevices and grottoes. Streams provide a wide variety of retreat sites for the species, such as vegetation-covered rocks (*e.g.*, rocks covered with moss, ferns, and liverworts) that help conserve humidity. In rocky stream habitat, the frogs exit their retreat site at dusk to forage actively over rocks and vegetation. In both types of habitat, the species exhibits site fidelity and homing behavior. Reproductive activity is correlated with precipitation and air temperature (Rogowitz *et al.* 2001, pp.

543–546; Joglar *et al.* 1996, p. 254), and males defend and guard egg clutches (Joglar *et al.* 1996, p. 255; Burrowes 1997, p. 35).

The guajón was listed as threatened under the Act primarily due to its highly restricted geographical distribution and habitat requirements (Joglar 1998, p. 73). The habitat of this species is naturally fragmented and the majority of the known populations are on private land in southeastern Puerto Rico, where the increased levels of land development threaten to further reduce and fragment the species habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines or extirpation.

Road and urban development can cause earth movement and modification of vegetation and streams, resulting in habitat fragmentation that may interrupt the connection between subpopulations, affecting the genetic variability and population numbers of the guajón (Burrowes 1997, p. 71; Joglar 1998, p. 73). Amphibian populations unable to disperse because of barriers may experience genetic isolation resulting in reduced heterozygosity (*i.e.*, potential reduction in genetic variability and evolutionary fitness). Fragmenting habitat through human activity such as roads makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895).

Deforestation near streams can result in erosion and increase flash flooding. Runoff water from slopes during flash flooding may disturb the habitat of the guajón, and high levels of sediment introduced into streams can fill spaces between rocks and decrease the availability of retreat sites among the boulders. Another potential effect of flash flooding is the flushing and drowning of adults, as well as the destruction of nests.

The use of pesticides, herbicides, and fertilizers in agricultural fields could have detrimental effects on survival of the guajón from runoff into waterways adjacent to guajón habitat. Many studies have documented negative impacts of agrochemicals on frogs; impacts include deformities, abnormal immune system functions, diseases, injury and death (Cooke 1981, pp. 123, 125, 127, 130, 131; Reeder *et al.* 1998, p. 264). Also, any stream modification (*e.g.*, embankment, channelization) or development (*e.g.*, tourist, urban) within the watershed where the guajón exists could result in an increase of chemical-laden sediments and alteration of the streams' quality.

Recreational use of streams may degrade the habitat quality for the guajón. People that live adjacent to guajón habitat may collect crabs and shrimp by pouring chemicals into the water (*e.g.*, chlorine). Aquatic species exit their retreats to the surface for breathing. These chemicals may directly affect water and habitat quality for the guajón. A decrease in water and habitat quality may have a serious impact on this species and other amphibians that inhabit streams. Recreational use of streams may introduce trash and waste to the water flow impacting the water quality and habitat (Joglar 1993, pp. 27, 33; Joglar *et al.* 1996, p. 258; Rivero 1991, p. 55). For example, caves in the Cuchilla de Panduras mountain range are used as garbage dumps (Joglar 1998, p. 75), attracting potential predators and diseases for the guajón.

Burrowes (1997, pp. 60–64) and Burrowes and Joglar (1999, pp. 709–710) assessed the genetic variation within and among populations of the guajón in separate cave systems within the historic geographic range of the species and found a high degree of genetic variation and lack of population differentiation in the species. These studies also documented that genetic flow among populations of the guajón is necessary to maintain the high genetic variability observed in the species. This genetic variability depends on interconnection between caves, and the availability of clean subterranean waterways as indirect dispersal routes necessary for out-crossing (Burrowes 1997, p. 73; Burrowes and Joglar 2000, p. 709). These studies also suggested that the guajón is perfectly adapted to the existing environmental conditions in the caves. Thus, habitat conditions, *e.g.*, clean waterways between the guajonales (the caves and grottoes where the guajón lives), are important to maintain a high degree of genetic variation among the guajón populations.

Previous Federal Actions

The guajón was listed as threatened under the Act on June 11, 1997 (62 FR 31757), due to its restricted distribution, specialized habitat utilization, and threats to its habitat. The Service determined that designation of critical habitat was not prudent at the time of listing because of increased risks of vandalism and illegal collection should the exact location of individuals be made public. On June 10, 2003, the Center for Biological Diversity filed a lawsuit against the Department of the Interior and the Service, alleging, among other things, failure to designate critical habitat for the guajón. In a settlement agreement dated February 5, 2004, the

Service agreed to reevaluate the need for critical habitat for this species and, if prudent, submit a proposed designation of critical habitat to the **Federal Register** by September 30, 2006, and a final designation by October 1, 2007. This document constitutes our new prudency determination and our proposed rule to designate critical habitat for the guajón, and fulfills the settlement agreement. For more information on previous Federal actions concerning the guajón, refer to the final listing rule (62 FR 31757).

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" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

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 at the time of listing 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 or PCEs, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if 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 under section 4(b)(2) of the Act.) Furthermore, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. However, an area that is currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, typically 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 habitats, 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.

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. In our June 11, 1997 final rule (62 FR 31757), we determined that designation of critical habitat for the guajón was not prudent because of increased risks of vandalism and illegal collection should the exact location of individuals be made public.

Critical habitat designation may provide additional information to individuals, local and State governments, and other entities engaged in long-range planning, because areas with features essential to the conservation of the guajón are clearly delineated and the primary constituent elements of the habitat necessary for the survival of the species are specifically identified. Moreover, we do not have specific evidence of taking, collection,

vandalism, trade, or unauthorized human disturbance affecting the guajón. Without such evidence, we cannot say that designation would increase the likelihood of take. Accordingly, we withdraw our previous determination that the designation of critical habitat will increase the degree of threat to the species. We determine that the designation of critical habitat is prudent for this species. At this time, we have sufficient information necessary to identify specific areas that meet the definition of critical habitat and are, therefore, proposing critical habitat for the guajón.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas that contain the physical and biological features essential to the conservation of the guajón (see Primary Constituent Elements section) and other areas that are essential to the conservation of this species. We have also reviewed available information that pertains to the habitat requirements of this species. This information included peer-reviewed scientific publications; unpublished reports from resource agencies and universities; field surveys and reports; information and maps from Puerto Rico Department of Natural and Environmental Resources, the Puerto Rico Planning Board, Puerto Rico Conservation Trust (PRCT), and U.S. Geological Survey topographic maps (scale 1:20,000); recent aerial photos; unpublished data and observations collected by Service biologists during recent field surveys; forest management plans from local agencies; the species' recovery plan; information received from local biologists and researchers who have worked with the species and its habitat; and information gathered during site visits to currently occupied sites. All information was used to determine the guajón's currently occupied range and habitat features needed to support the necessary biological functions of the species. We are not proposing any areas outside the geographical area presently occupied by the species because none were found to be essential to the conservation of the species, however, we are proposing three small units that were not known to be occupied at the time of listing but are currently occupied.

Primary Constituent Elements for the Guajón

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best

scientific data available and to consider, within areas occupied by the species at the time of listing, those physical and biological features that are essential to the conservation of the species (PCEs), and that may require special management considerations and 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. All areas proposed as critical habitat for the guajón are currently occupied, within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

The distribution of the guajón is associated with the granitic and plutonic rocks found in the Cuchilla de Panduras mountain range in southeastern Puerto Rico. The habitat of the guajón lies within several life zones as described by Ewel and Whitmore (1973, pp. 20–49). The variables used to delineate any given life zone are mean annual precipitation and mean annual temperature. The two predominant life zones found within guajón habitat are Subtropical Moist and Subtropical Wet forests. Trees up to 65.6 ft (20 m) tall, with rounded crowns, characterize the Subtropical Moist Forest life zone. Many of the woody species are deciduous during the dry season. The abundant moisture of the Subtropical Wet Forest life zone is evident in the character of its vegetation. Epiphytic ferns, bromeliads, and orchids are common, the forests are relatively rich in plant species, and the growth rates of successional trees are rapid. This type of forest contains more than 150 species of trees that form a dark, complete canopy at about 65.6 ft (20 m).

The guajón is found at low and intermediate elevations up to 1,312.3 ft (400 m) above sea level (Burrowes 1997, p. 52; Burrowes *et al.* 2004, p. 145; Rivero 1998, p. 13), where it inhabits caves formed by large boulders of granite rock, and in associated streams with patches of rock without cave systems (Burrowes and Joglar 1999, p. 706; Vega-Castillo 2000, p. 35; C. Ruiz-Lebrón, pers. comm., 2006). Caves are dark inside, although some light enters through gaps formed from the union of two or more boulders. Structurally, the caves are complex, having several chambers of irregular shape and size, and may be at different depths between

the surface of the ground and stream (Burrowes 2000, p. 376). The ecological conditions of the caves are relatively uniform; mean temperature and relative humidity are the same at any given month of the year, and the caves do not have thermal stratification (Rogowitz *et al.* 1999, p. 179; Rogowitz *et al.* 2001, pp. 542, 545; Burrowes 1997, p. 74).

In streams, the guajón has been found only in patches of rock in the streambed (Vega-Castillo 2000, pp. 36, 40). The streams can be perennial, or they can be ephemeral, formed during heavy rain. The streams are surrounded by secondary forest. Rocks in the streambed form crevices and grottoes. Streams provide a wide variety of retreat sites for the species, such as vegetation-covered rocks (*e.g.*, rocks covered with moss, ferns, and liverworts) that help conserve humidity. Temperature and relative humidity at streams vary with the months of the year. The foraging habitat of the guajón may extend laterally from the edge of streambed (or other water source) as far as 66 to 99 ft (20 to 30 m) into adjacent vegetated areas (Vega-Castillo, pers. obs., 2001). In rocky stream habitat, frogs leave their retreat site at dusk to forage actively over rocks and vegetation.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that PCEs for the guajón are:

(1) Subtropical forest (which may include trees such as *Cecropia schreberiana*, *Dendropanax arboreus*, *Guarea guidonia*, *Piper aduncum*, *Spathodea campanulata*, *Syzygium jambos*, and *Thespesia populnea*) at elevations from 118 to 1,183 ft (36 to 361 m) above sea level.

(2) Plutonic, granitic, or sedimentary rocks/boulders that form caves, crevices, and grottoes (interstitial spaces) in a streambed; and that are in proximity, or connected, to a permanent, ephemeral, or subterranean clear-water stream or water source. The interstitial spaces between or underneath rocks provide microenvironments characterized by generally higher humidity and cooler temperatures than outside the rock formations.

(3) Vegetation-covered rocks (the vegetation typically includes moss, ferns, and hepatics such as *Thuidium urceolatum*, *Taxilejeunea sulphurea*, and *Huokeria acutifolia*) extending laterally to a maximum of 99 ft (30 m) on each bank of the stream; these rocks provide cover and foraging sites and help conserve humidity.

This proposed designation is designed for the conservation of PCEs necessary

to support the life history functions of the guajón. Because not all life history functions require all the PCEs, not all proposed critical habitat will contain all the PCEs.

Units are designated based on sufficient PCEs being present to support one or more of the species' life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species' particular use of that habitat. Where a subset of the PCEs is present at the time of designation, this rule protects those PCEs and thus the conservation function of the habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of the guajón. We are not proposing to designate any areas outside the geographical area presently occupied by the species.

We began our analysis by considering the historic distribution of and sites occupied by the species at the time of listing. We reviewed existing information to identify the historic distribution and sites occupied by the guajón at the time of listing. We also reviewed available information pertaining to the habitat requirements of this species. This information included literature cited in the final listing rule and the final recovery plan, site records, published scientific reports, recent aerial photos, materials submitted by other agencies for development project reviews, U.S. Geological Survey (USGS) topographic maps (scale 1:20,000), and office Geographic Information System (GIS) layers.

An area was considered for designation if: (1) It was occupied by the guajón at the time of listing and possessed at least one or more of the PCEs; or (2) was not occupied at the time of listing, but is currently occupied by the guajón, and has been determined to be essential to the conservation of the species. These areas were deemed essential based on their ability to support life history and population-level functions for the guajón, as well as the need for sufficient habitat to protect existing populations.

We selected areas of habitat known to be currently occupied by the species, based on field reports from the Puerto Rico Department of Natural and Environmental Resources (DNER) and the PRCT, field visits from Service personnel, information from species' experts, and data cited in the scientific

literature. Field reconnaissance was done in all areas for verification of presence/absence. Presence of the guajón was documented by listening to the distinctive call of the males.

Based on this review and visual inspection of sites where the guajón was found, we identified 12 units that contain one or more of the PCEs. Areas not containing the PCEs are not included in the proposal. Such areas include high-flow streams and rivers; drainages with little or no vegetative cover; and drainages with rocks that were small, dispersed, or not forming crevices and grottoes. One area in the municipality of Maunabo and one area in the municipality of Patillas that were occupied by the guajón at the time of listing do not currently contain PCEs and the guajón was not observed or recorded in consecutive visits to these sites in March and April 2006. Therefore we are not including either of these areas in our proposed designation.

Boundaries for each unit were determined based on known guajón sightings, topographical features known to be needed by the species, the range of elevations used by the species, and visual inspection of the units. This habitat includes streams with patches of rocks and associated riparian vegetation that provides foraging habitat for the guajón. We have included a foraging area of 99 ft (30 m) along creeks and drainages as a result of observations by experts that the foraging habitat of the guajón may extend outside the streambed in vegetated areas as far as 30 meters from the water source (Vega-Castillo, pers. obs., 2001). Data layers defining map units were created by delineating habitats that contained at least one or more of the PCEs identified above over USGS topographic maps (UTM 19, NAD 83). Municipal boundaries, rivers, and creeks layers were provided by the Puerto Rico Planning Board (PRPB) but adapted and verified over a base map of USGS 1:20,000 quadrangles. The roads layer was created at the Boquerón Field Office using a base map of USGS 1:20,000 quadrangles. Quadrangles used were: Humacao, Punta Guayanés, Juncos, Yabucoa, Punta Tuna, and Patillas.

We propose 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 (9 units), and additional areas not occupied at the time of listing that provide habitat essential to the conservation of the species (3 units). The 12 units that we are proposing as critical habitat

encompass approximately 217.2 ac (88 ha) within the municipalities of Humacao, Las Piedras, Maunabo, Patillas, and Yabucoa. The proposed units contain habitat that supports biological and population-level functions (including needs for food, shelter, breeding sites, foraging, and population expansion) of the guajón. Changes in the composition and abundance of vegetation surrounding guajón habitat, degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse are threats to the guajón that require special management. A brief discussion of each unit proposed as critical habitat is provided in the unit descriptions below.

When determining proposed critical habitat boundaries, we made every effort to avoid proposing the designation of developed areas such as buildings or houses, paved areas, and other structures that lack PCEs for the guajón. When it has not been possible to map out these structures and the land upon which they are sited because of scale issues, they have been excluded from the proposed designation by rule text. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or PCEs in adjacent critical habitat.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and containing the PCEs may require special management considerations or protection. As discussed in more detail in the unit description below, we find that units occupied at the time of listing (Units 1, 2, 4, 5, 6, 7, 8, 9, and 10) may require special management considerations or protection due to threats to the guajón and/or its habitat. All these proposed units are adjacent to agricultural lands, roads, trails, homes, or other manmade structures. Management considerations and protection include protection of the guajón and its habitat from threats posed by deforestation and earth movement near streams for road construction, and for agricultural, urban, and rural development. These threats may result in changes in the composition and abundance of vegetation surrounding guajón habitat, as well as degradation of water quality from illegal garbage dumping, untreated sewage, and agricultural practices (e.g., use of herbicides, fertilizers, or insecticides).

Proposed Critical Habitat Designation

We are proposing 12 units as critical habitat for the guajón. 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 that may require special management (9 units), and those additional areas that were not occupied at the time of listing but were found to be essential to the conservation

of the guajón (3 units). The 12 areas proposed as critical habitat are: Mariana, Montones, Tejas, Emajagua, Jacabo, Calabazas, Guayanés, Panduras, Talante, Guayabota, Guayabito, and Guayabo Units.

TABLE 1.—AREAS PROPOSED AS CRITICAL HABITAT FOR THE GUAJÓN.

[Area estimates reflect all land within critical habitat unit boundaries]

Proposed critical habitat unit	Land ownership	Area (ac (ha))
1. Mariana, Humacao, PR	Private	23.6 (9.6)
2. Montones, Las Piedras, PR	Private	31.1 (12.6)
3. Tejas, Las Piedras, PR	Private	5.2 (2.1)
4. Emajagua, Maunabo, PR	Private	33.0 (13.4)
5. Jacabo, Patillas, PR	Private	10.3 (4.2)
6. Calabazas, Yabucoa, PR	Private	13.8 (5.6)
7. Guayanés, Yabucoa, PR	Private	7.9 (3.2)
8. Panduras, Yabucoa, PR	Private	28.6 (11.6)
9. Talante, Yabucoa, PR	Private	23.5 (9.5)
10. Guayabota, Yabucoa, PR	Private	13.1 (5.3)
11. Guayabito, Yabucoa, PR	Private	17.3 (7.0)
12. Guayabo, Yabucoa, PR	Private	9.8 (3.9)
Total	217.2 ac (88 ha)

We present brief descriptions of all units, the primary constituent elements they contain, and reasons why they meet the definition of critical habitat for the guajón, below. Universal Transverse Mercator (UTM) coordinates and more precise legal descriptions of each unit are provided in the Proposed Regulation Promulgation section.

Unit 1: Mariana Unit

Unit 1 consists of approximately 23.6 ac (9.6 ha) located south of Road PR-909, west of Road PR-3, and north of Quebrada Cataño within Mariana Ward, Humacao. Unit 1 contains 5,412.8 ft (1,649.8 m) of an unnamed, rocky stream with abundant water, a guajón foraging area extending laterally 99 ft (30 m) from each bank of the stream, and secondary forest on all sides of the stream. This unit was known to be occupied at the time of listing (J. Sustache, DNER database, 1996). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 1 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 2: Montones Unit

Unit 2 consists of approximately 31.1 ac (12.6 ha) in Montones Ward, Las Piedras. It contains 6,941.7 ft (2,115.8 m) of the headwaters of the Valenciano River in the vicinity of PR 917 Km 9.7, and a guajón foraging area of 99 ft (30 m) on each side of the river. This unit was known to be occupied at the time of listing (F. Bird-Picó, DNER database, 1996). Although some sections of this unit do not contain PCE 1, all other PCEs are found within this unit (a rocky stream with abundant water surrounded by secondary forest, and a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees). In some areas of the creek, the water disappears underground and reappears at various intervals. The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 2 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCE 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 3: Tejas Unit

Unit 3 consists of approximately 5.2 ac (2.1 ha) located between Road PR-905 to the east, Road PR-908 to the west, Road PR-9921 to the north, and

Road PR-9904 to the south within Tejas Ward, Las Piedras. It contains 1,312 ft (400 m) of an unnamed tributary of the Río Humacao, and a guajón foraging area of 99 ft (30 m) on each side of the tributary. This unit was not known to be occupied at the time of listing. Every PCE is found within this unit (the area contains a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees), and this was confirmed by the Service in March 2006. Unit 3 is essential to the conservation of the guajón. The guajón was listed under the Act primarily due to its highly restricted geographical distribution and its specialized habitat requirements (Joglar 1998, p. 73). Thus, protection of all existing populations of the guajón is important to the conservation of the species. The habitat of this species is naturally fragmented, and the majority of the known populations are on private land where increased levels of land development in southeastern Puerto Rico are occurring where the species occurs, and threaten to further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions, such as roads, makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895). Because it is occupied by the species and contains sufficient PCEs

to support the life functions of the species, Unit 3 is essential to the conservation of the species.

Unit 4: Emajagua Unit

Unit 4 consists of approximately 33.0 ac (13.4 ha) between Quebrada Arenas and Quebrada Emajagua, north of Road PR-901 (on the periphery of an underground tunnel under construction), within Emajagua Ward, Maunabo. It contains three connected, unnamed streams/drainages totaling about 7,400 ft (2,256 m), and a guajón foraging area of 99 ft (30 m) on each side of the streams/drainages. This unit was known to be occupied at the time of listing (R. Thomas, DNER database, 1965). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 4 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3) and pollution of streams caused by human refuse (PCE 2).

Unit 5: Jacoboa Unit

Unit 5 consists of approximately 10.3 ac (4.2 ha) northwest of road PR-758 within Ríos Ward, Patillas. It contains 2,334.6 ft (711.6 m) of an unnamed rocky drainage to the Jacoboa River, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was known to be occupied at the time of listing (R. Thomas, DNER database, 1965). Every PCE is found within this unit (it contains a rocky creek with small and large sedimentary rocks and boulders, closed forest canopy over the creek, and closed, mature forest along the shores, including some bamboo stands). The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 5 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams caused by human refuse (PCE 2).

Unit 6: Calabazas Unit

Unit 6 consists of approximately 13.8 ac (5.6 ha) located northeast of road PR-900, between Quebrada Guayabo to the south and Río Guayanés to the north,

within Calabazas Ward, Yabucoa. The unit contains a 3,198 ft (975 m) stretch of a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was known to be occupied at the time of listing (J. Montero, DNER database, 1988). Every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 6 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 7: Guayanés Unit

Unit 7 consists of approximately 7.9 ac (3.2 ha) northeast of Road PR-900 between Quebrada Guayabo to the south and Río Guayanés to the north, and north of Unit 6, within Calabazas Ward, Yabucoa. It contains 4,265 ft (1,300 m) of an unnamed drainage, and a guajón foraging area of 99 ft (30 m) on each side of the drainage. This unit was known to be occupied at the time of listing (J. Montero, DNER database, 1988). Every PCE is found within this unit (it contains a rocky creek surrounded by vines, herbaceous vegetation, shrubs, and trees). The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 7 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 8: Panduras Unit

Unit 8 consists of approximately 28.6 ac (11.6 ha) to the northwest and southeast of Road PR-3 within Calabazas Ward, Yabucoa. It contains 2,314.1 ft (705.6 m) of an unnamed drainage, a guajón foraging area of 99 ft (30 m) on each side of the drainage, and 18.2 ac (7.4 ha) of lands owned by the PRCT near the top of Cerro La Pandura. This unit was known to be occupied at the time of listing (J. Rivero 1998, DNER database, 1978). Every PCE is found

within this unit (it contains a rocky area with medium and large granite boulders, a drainage with closed-canopy forest over the drainage, and closed, mature forest along the edges). The presence of the species and PCEs at this site was confirmed by the Service in March 2006. Threats that may require special management considerations, due to the proximity of Unit 8 to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3) and pollution of streams caused by human refuse (PCE 2). This area does not currently have a management plan (Fernando Silva, pers. comm., 2006).

Unit 9: Talante Unit

Unit 9 consists of approximately 23.5 ac (9.5 ha) east of Road PR-3 within Calabazas Ward and Talante Ward, Yabucoa. It contains the headwaters of the Talante Creek, five unnamed drainages (totaling about 3,500 ft (1,061 m)), and a guajón foraging area of 99 ft (30 m) on each side of the creek and drainages. About 2.8 ac (1.1 ha) of Unit 9 are within Calabazas Ward, and the remaining 21.6 ac (8.7 ha) are within Talante Ward. This unit was known to be occupied at the time of listing (J. Rivero 1998, DNER database, 1978). Every PCE is found within this unit (it contains drainages with medium and large granite boulders that are surrounded by vines, herbaceous vegetation, shrubs, and trees, and that connect to a small rocky creek; some patches contain big rocks that are completely exposed to the sun or covered with vines). The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of Unit 9 to urbanized areas and infrastructure (e.g., major roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides) and pollution of streams caused by human refuse (PCE 2).

Unit 10: Guayabota Unit

Unit 10 consists of approximately 13.1 ac (5.3 ha) northeast of intersection of roads PR-181 and PR-182, and south of the municipal boundary with San Lorenzo, within Guayabota Ward, Yabucoa. It contains a small unnamed creek (about 700 ft (212 m)), and a guajón foraging area of 99 ft (30 m) on each side of the creek. This unit was known to be occupied at the time of

listing (J. Rivero, DNER database, 1980; Burrowes 1997). Every PCE is found within this unit. The northwest section of the rocky creek (large and medium granite boulders) is surrounded by closed canopy over the creek, with herbaceous vegetation and some trees along the shore. The southeastern section of the rocky creek has large and medium sedimentary boulders and is surrounded by semi-closed canopy over the creek and shores that are primarily exposed to the sun, with some areas covered with grass. The presence of the species and PCEs at this site was confirmed by the Service in April 2006. Threats that may require special management considerations, due to the proximity of this unit to urbanized areas and infrastructure (e.g., roads), include changes in the composition and abundance of vegetation surrounding guajón habitat (PCEs 1 and 3), degradation of water quality due to agricultural practices (e.g., use of herbicides, fertilizers, or insecticides), and pollution of streams caused by human refuse (PCE 2).

Unit 11: Guayabito Unit

Unit 11 consists of approximately 17.3 ac (7.0 ha) south of Road PR-900 and north of the Maunabo boundary, within Guayabota Ward, Yabucoa. It contains 1,232.6 ft (4,042 m) of an unnamed drainage and tributary that connect to Quebrada Guayabo, and a guajón foraging area of 99 ft (30 m) on each side of both the drainage and tributary. This unit was not known to be occupied at the time of listing. The unit is split into a rocky drainage to the west (large, clumped, granite boulders), and a rocky creek to the east (large granite boulders). Both are surrounded by closed canopy over the drainage and creek, and closed mature forest along the shores. Thus, every PCE is found within this unit, and presence of the species and PCEs at this site was confirmed by the Service in April 2006. Unit 11 is essential to the conservation of the guajón for several reasons. The boulders and closed canopy provide the essential habitat for guajón reproduction and foraging. The guajón was listed primarily due to its highly restricted geographical distribution and habitat requirements (Joglar 1998, p. 73). The habitat of this species is naturally fragmented, and the majority of the known populations are on private land, where the increased levels of land development currently occurring in southeastern Puerto Rico threatens to further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular

environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions such as roads makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895). Protection of all existing populations of the guajón is extremely important due to its limited distribution and the specialized habitat it occupies.

Unit 12: Guayabo Unit

Unit 12 consists of approximately 9.8 ac (3.9 ha) along Quebrada Guayabo, along and south of Road PR-900 in Guayabota Ward, Yabucoa. It contains 2,247.5 ft (685 m) of the southwesternmost section of Quebrada Guayabo, and a guajón foraging area of 99 ft (30 m) on each side of the stream. This unit was not known to be occupied at the time of listing. Every PCE is found within this unit and presence of the species and PCEs at this site was confirmed by the Service in April 2006. Unit 12 is essential to the conservation of the guajón because it contains the PCEs (a rocky stream surrounded by closed canopy over the stream, and closed mature forest along the shores that provide the habitat essential to the guajón for food, shelter, breeding, foraging, and population expansion), and because it is occupied. Due to the species' limited distribution and the specialized habitat it occupies, protection of all existing populations of the guajón is extremely important to conservation of the species.

The habitat of this species is naturally fragmented, and remaining habitat is threatened by land development which can further reduce and fragment the species' habitat, distribution, and survival (Joglar 1998, p. 73). Being a habitat specialist, the guajón is adapted to particular environmental conditions, and abrupt changes in these conditions could result in population declines. Additionally, fragmenting habitat through human intrusions, such as roads, makes populations less resilient to natural population declines (Pechman *et al.* 1991, p. 895).

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 (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Under 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 PCEs 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 become 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.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the guajón or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local, or private lands requiring a Federal permit (such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Guajón and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for guajón jeopardy analyses that relies heavily on the importance of populations to the survival and recovery of the guajón. 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 guajón 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 population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each 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 critical habitat for the guajón. 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 critical habitat units is to support viable populations of the guajón.

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 guajón is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat for the guajón include, but are not limited to:

(1) Activities that would significantly alter the vegetation structure in and around creeks, streams, and drainages. Such activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, development of new roads and trails, and construction of new homes and commercial establishments. The elimination or alteration of vegetation structure could result in habitat fragmentation that may interrupt the connection between populations, alter guajón foraging activities and the availability of foraging resources, reduce the quality of breeding microhabitat (e.g., change in temperature and humidity levels within breeding crevices and caves), and result in direct mortality of individuals through trampling or crushing, or desiccation from sun exposure.

(2) Activities that may alter the natural flow of water. Such activities could include, but are not limited to, stream modifications related to the expansion or maintenance of roads, development of new roads and trails, and construction of new homes and commercial establishments. Alteration of water flow may result in drowning of adults and loss of egg clutches through erosion and increase flash flooding, abandonment of suitable habitat and establishment into less-favorable areas, and reduction of breeding activities (e.g., insufficient or excessive humidity for proper egg development).

(3) Activities that may reduce the quality of water. Such activities could include, but are not limited to, recreational activities within major streams and rivers connecting drainages and tributaries used by the species, agricultural practices (e.g., use of pesticides, herbicides, or fertilizers), and pollution of streams caused by human refuse.

(4) Activities that eliminate or degrade the natural connection between guajón populations. Such activities could include, but are not limited to, vegetation cutting for expanding or maintaining roads, development of new roads and trails, and construction of new homes and commercial establishments. These activities may interrupt the connection between existing populations; thus, dispersal and interaction between sub-populations could be affected, restricting gene flow and jeopardizing the integrity of the species' gene pool.

We consider the proposed 12 critical habitat units to be currently occupied by the guajón, based on peer-reviewed scientific publications; unpublished reports from resource agencies, non-government organizations, and universities; field surveys and reports; and field inspections by Service personnel. All of the units included in this proposed designation contain the features that are essential to the conservation of the guajón or are essential to the conservation of the species. Federal agencies already consult with us on activities in areas currently occupied by the guajón, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the guajón.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those

physical and biological features (i) Essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species that require no special management or protection also are not, by definition, critical habitat. Thus, for example, areas that do not need special management may not need protection if there is lack of pressure for change, such as areas too remote for anthropogenic disturbance.

There are multiple ways to provide management for species' habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as in areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans as well as management under Federal agencies' jurisdictions can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent overall. In making this determination, we examine whether the plan provides management or protection of the PCEs that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management or protection actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others. In this proposed designation of critical habitat for the guajón, we are not considering the non-inclusion of any units on the basis of adequate management plans, under section 3(5)(A) of the Act.

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the

benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under section 4(b)(2) the Secretary has discretion as to which factors to consider and how much weight will be given to any factor. Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In this proposed designation of critical habitat for the guajón, we are not considering or proposing any exclusions pursuant to section 4(b)(2) of the Act. However, we will be conducting an economic analysis of the impacts of the proposed critical habitat designation and related factors, which will be made available for public review and comment. Based on public comment on that document, the proposed designation, and the information in the final economic analysis, areas 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 424.19. Under 50 CFR 424.19, we must propose an area as critical habitat, and receive public comment on that action, prior to making an exclusion of that area under section 4(b)(2) of the Act from the final critical habitat designation.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the guajón 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://www.southeast.fws.gov>, or by contacting the Boquerón Field Office directly (see ADDRESSES).

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 three 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. Copies of this proposed rule will be sent to these peer reviewers, 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.

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.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the “Adverse Modification Standard” section. An announcement will be made in the **Federal Register** and in local newspapers when the draft economic analysis is available for public review and comment. When it is completed, the draft economic analysis will be available from the Internet Web site at <http://www.southeast.fws.gov> or by contacting the Boqueron Field Office directly (see **ADDRESSES**).

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

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would

not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (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 under section 4(b)(2) of the Act 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 guajón is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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 due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provide no incremental restrictions, we do not anticipate that this rule will significantly or uniquely affect small governments. As such, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Executive Order 12630—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 guajón in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the guajón does not pose 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 Puerto Rico. The designation of critical habitat in areas currently occupied by the guajón 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 that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation 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 propose designating critical habitat in accordance with the provisions of the 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 guajón.

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 have determined that there are no tribal lands with features essential for the conservation of the guajón. Therefore, critical habitat for the guajón has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Boquerón Field Office (see **ADDRESSES** section).

Author

The primary author of this package is Dr. Jorge E. Saliva, Boquerón Field Office (see **ADDRESSES** section).

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 "Guajón" under "AMPHIBIANS" in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
AMPHIBIANS							
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *
Guajón	<i>Eleutherodactylus cooki</i> .	U.S.A (PR)	Entire	T	617	17.95(d)	NA
* * *	* * *	* * *	* * *	* * *	* * *	* * *	* * *

3. In § 17.95, amend paragraph (d) by adding an entry for "Guajón (*Eleutherodactylus cooki*)" in the same order that the species appears in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians.*

* * * * *

Guajón (*Eleutherodactylus cooki*)

(1) Critical habitat units are depicted for Humacao, Las Piedras, Maunabo, Patillas, and Yabucoa, Puerto Rico, on the maps below.

(2) The primary constituent elements of critical habitat for the guajón are the habitat components that provide:

(i) Subtropical forest (which may include trees such as *Cecropia schreberiana*, *Dendropanax arboreus*, *Guarea guidonia*, *Piper aduncum*, *Spathodea campanulata*, *Syzygium*

jambos, and *Thespesia populnea*) at elevations from 118 to 1,183 ft (36 to 361 m) above sea level;

(ii) Plutonic, granitic, or sedimentary rocks/boulders that form caves, crevices, and grottoes (interstitial spaces) in a streambed, and that are in proximity, or connected, to a permanent, ephemeral, or subterranean clear-water stream or water source. The interstitial spaces between or underneath rocks provide microenvironments characterized by generally higher humidity and cooler temperatures than outside the rock formations; and

(iii) Vegetation-covered rocks (the vegetation typically includes moss, ferns, and hepatics such as *Thuidium urceolatum*, *Taxilejeunea sulphurea*, and *Huokeria acutifolia*) extending laterally to a maximum of 99 feet (30 meters) on each bank of the stream.

These rocks provide cover and foraging sites and help conserve humidity.

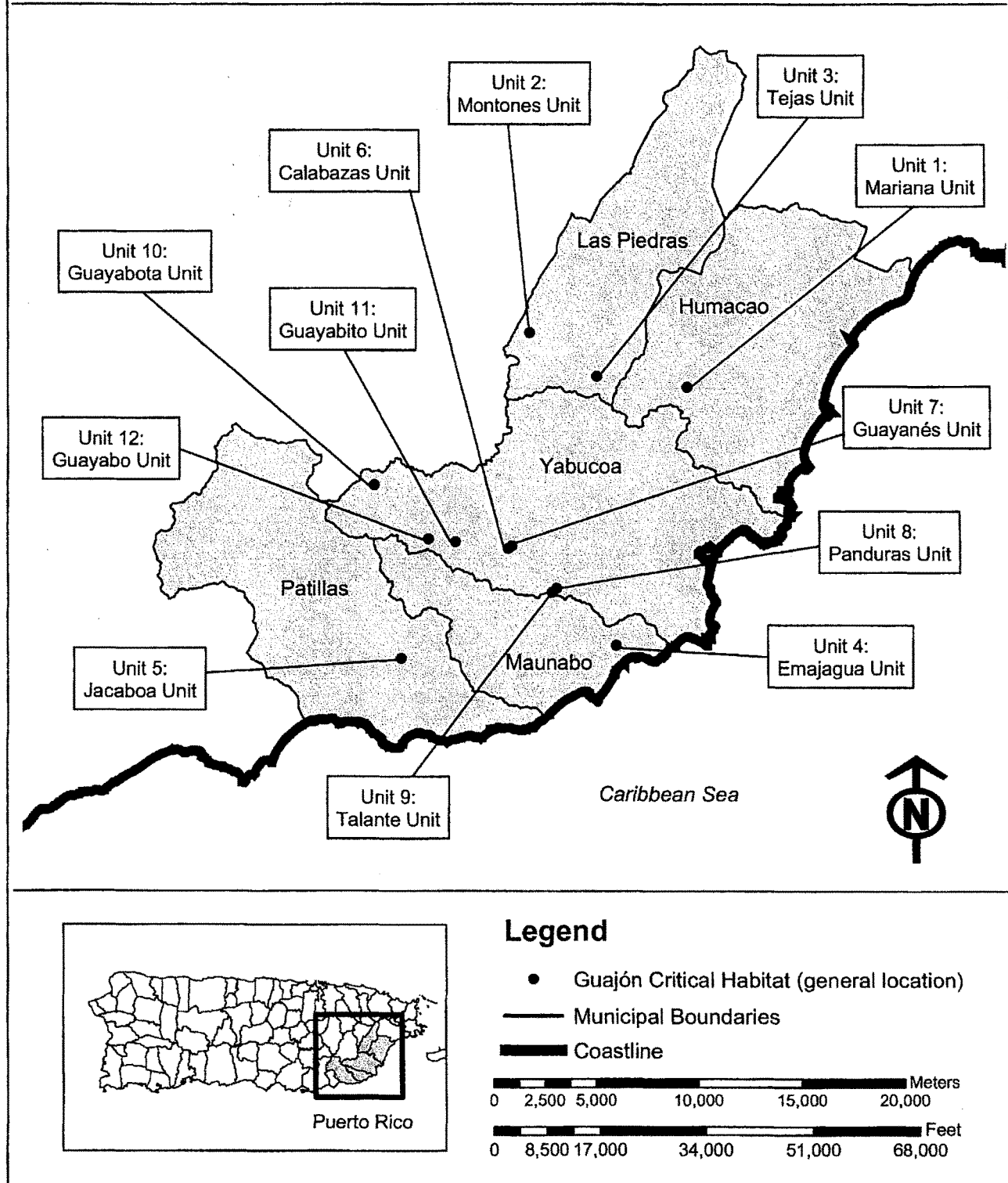
(3) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the primary constituent elements, such as buildings, driveways, lawns, aqueducts, airports, and roads, and the land on which such structures are located.

(4) *Critical habitat maps.* Data layers defining map units were created by delineating habitats that contain at least one or more of the PCEs defined in paragraph (2) of this entry, over United States Geological Survey topographic maps (UTM 19, NAD 83). USGS 1:20,000 quadrangles used in the base map were: Humacao, Punta Guayanés, Juncos, Yabucoa, Punta Tuna, and Patillas.

(5) **Note:** Index map (Map 1) follows:

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Map 1: Index Map of the Proposed Critical Habitat Units for the Guajón



(6) Unit 1: Mariana, Humacao, Puerto Rico.

(i) *General Description:* Unit 1 consists of approximately 23.6 acres (ac) (9.6 hectares (ha)) located south of Road PR-909, west of Road PR-3, and north of Quebrada Cataño within Mariana Ward, Humacao.

(ii) *Coordinates:* From Humacao and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 1 bounded by the following UTM 19 NAD 83

coordinates (E, N): 833916.64, 2007339.77; 833916.67, 2007341.73; 833916.83, 2007343.69; 833917.12, 2007345.64; 833917.53, 2007347.56; 833918.07, 2007349.45; 833918.73, 2007351.30; 833919.51, 2007353.10; 833920.41, 2007354.85; 833921.42, 2007356.54; 833922.53, 2007358.15; 833923.65, 2007359.57; 833989.83, 2007438.54; 833989.93, 2007438.66; 833991.25, 2007440.12; 833992.66, 2007441.48; 833994.16, 2007442.76; 833995.73, 2007443.93; 833997.38, 2007444.99; 833999.10, 2007445.95; 834000.88, 2007446.79; 834002.70, 2007447.51; 834004.57, 2007448.12; 834006.48, 2007448.60; 834008.41, 2007448.95; 834010.36, 2007449.18; 834012.33, 2007449.27; 834014.29, 2007449.24; 834016.25, 2007449.08; 834018.19, 2007448.80; 834020.12, 2007448.38; 834022.01, 2007447.85; 834023.86, 2007447.19; 834025.66, 2007446.41; 834027.41, 2007445.51; 834029.10, 2007444.50; 834030.71, 2007443.38; 834032.25, 2007442.16; 834033.71, 2007440.84; 834035.08, 2007439.43; 834036.35, 2007437.94; 834037.52, 2007436.36; 834038.59, 2007434.71; 834039.54, 2007432.99; 834040.38, 2007431.21; 834041.11, 2007429.39; 834041.71, 2007427.52; 834042.19, 2007425.61; 834042.54, 2007423.68; 834042.77, 2007421.73; 834042.87, 2007419.76; 834042.84, 2007417.80; 834042.68, 2007415.84; 834042.39, 2007413.90; 834041.98, 2007411.98; 834041.44, 2007410.09; 834040.78, 2007408.23; 834040.00, 2007406.43; 834039.10, 2007404.68; 834038.09, 2007403.00; 834036.98, 2007401.38; 834035.86, 2007399.96; 833985.64, 2007340.04; 834043.84, 2007268.82; 834044.09, 2007268.50; 834045.27, 2007266.93; 834046.33, 2007265.28; 834047.29, 2007263.56; 834048.13, 2007261.78; 834048.85, 2007259.96; 834049.45, 2007258.09; 834049.93, 2007256.18; 834050.29, 2007254.25; 834050.51, 2007252.30; 834050.61, 2007250.33; 834050.58, 2007248.37; 834050.42, 2007246.41; 834050.14, 2007244.47; 834049.72, 2007242.54; 834049.18, 2007240.65; 834048.52, 2007238.80; 834048.09, 2007237.77; 834014.85, 2007161.84; 834040.05, 2007115.14; 834132.46,

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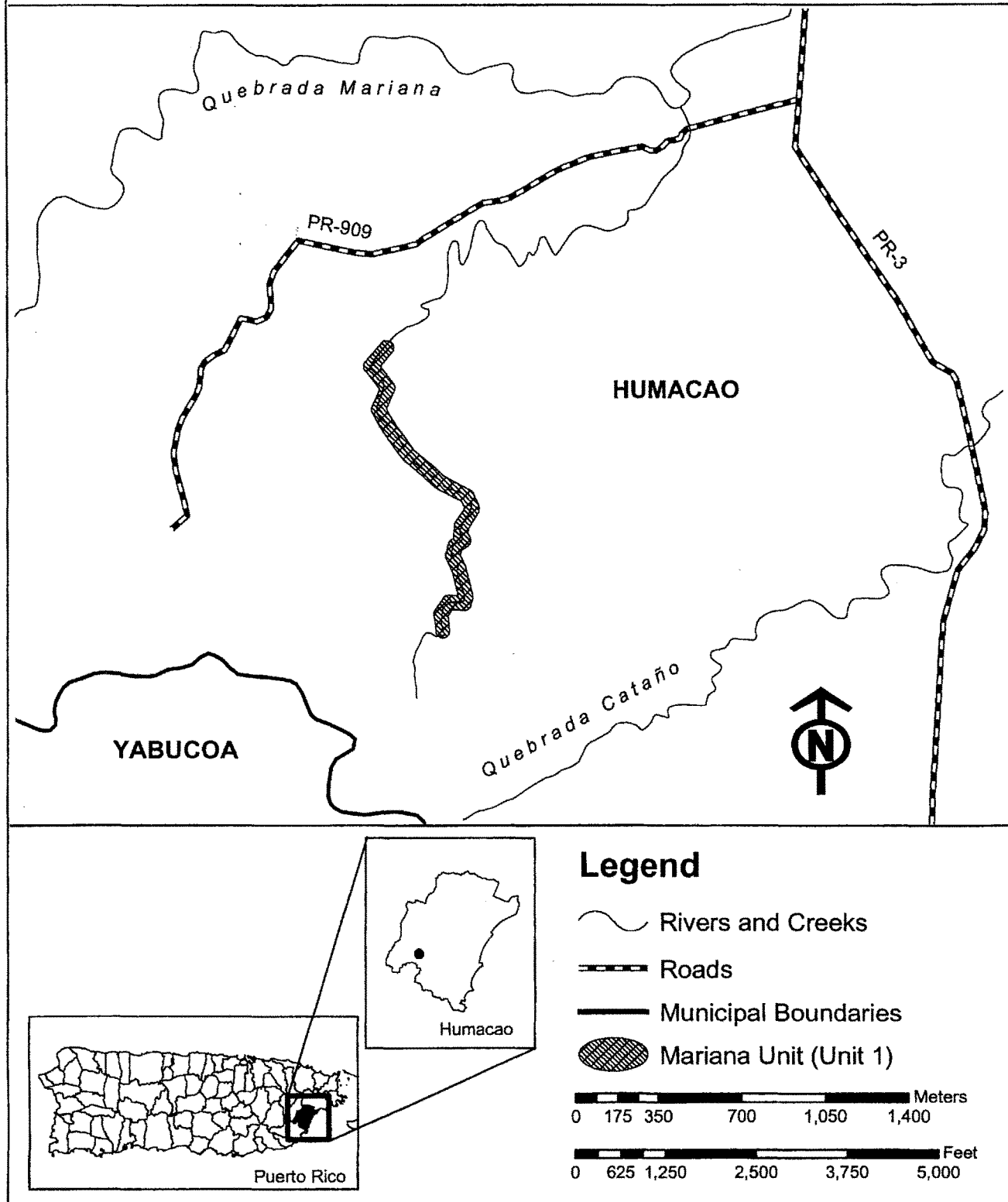
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(iii) **Note:** Map of Unit 1 (Map 2)
follows:

BILLING CODE 4310-55-P

MAP 2. Proposed Critical Habitat for the Guajón: Mariana Unit: Mariana Ward, Humacao, Puerto Rico



(7) Unit 2: Montones, Las Piedras, Puerto Rico.

(i) *General Description*: Unit 2 consists of approximately 31.1 ac (12.6 ha) along the headwaters of the Valenciano River at PR 917 Km 9.7, Montones Ward, Las Piedras.

(ii) *Coordinates*: From Juncos USGS 1:20,000 quadrangle map. Unit 2 bounded by the following UTM 19 NAD 83 coordinates (E, N): 825191.05, 2008735.38; 825191.08, 2008737.35; 825191.17, 2008738.56; 825197.07, 2008804.62; 825197.15, 2008805.37; 825197.43, 2008807.31; 825197.85, 2008809.23; 825198.39, 2008811.12; 825199.05, 2008812.97; 825199.83, 2008814.78; 825200.73, 2008816.52; 825201.74, 2008818.21; 825202.09, 2008818.75; 825237.76, 2008871.58; 825238.52, 2008872.65; 825239.74, 2008874.19; 825241.06, 2008875.65; 825242.47, 2008877.02; 825243.97, 2008878.29; 825245.55, 2008879.46; 825247.20, 2008880.53; 825248.91, 2008881.48; 825249.96, 2008881.99; 825516.70, 2009006.30; 825517.43, 2009006.63; 825519.26, 2009007.35; 825521.13, 2009007.95; 825523.03, 2009008.43; 825524.97, 2009008.78; 825526.92, 2009009.01; 825528.88, 2009009.11; 825530.85, 2009009.08; 825532.58, 2009008.94; 825607.77, 2009000.89; 825608.00, 2009000.86; 825609.94, 2009000.58; 825611.86, 2009000.16; 825613.75, 2008999.62; 825615.60, 2008998.96; 825617.41, 2008998.18; 825619.15, 2008997.28; 825619.44, 2008997.12; 825657.84, 2008975.25; 825735.16, 2008935.69; 825736.06, 2008935.21; 825737.74, 2008934.20; 825739.36, 2008933.08; 825740.90, 2008931.86; 825742.35, 2008930.54; 825742.41, 2008930.48; 825805.54, 2008869.09; 825875.41, 2008891.79; 825982.60, 2009016.88; 826011.34, 2009100.61; 826011.81, 2009101.89; 826012.60, 2009103.69; 826013.49, 2009105.44; 826014.50, 2009107.13; 826015.62, 2009108.74; 826015.93, 2009109.15; 826234.92, 2009394.34; 826235.83, 2009395.46; 826237.15, 2009396.92; 826238.56, 2009398.29; 826240.06, 2009399.56; 826241.64, 2009400.73; 826243.28, 2009401.79; 826332.44, 2009455.31; 826363.91, 2009522.58; 826363.96, 2009522.68; 826364.85, 2009524.43; 826365.86, 2009526.12; 826366.98, 2009527.74; 826368.20, 2009529.27; 826369.52, 2009530.73; 826370.93, 2009532.10; 826372.43, 2009533.37; 826374.01, 2009534.54; 826375.66, 2009535.61; 826377.38, 2009536.56; 826379.15, 2009537.40; 826380.92,

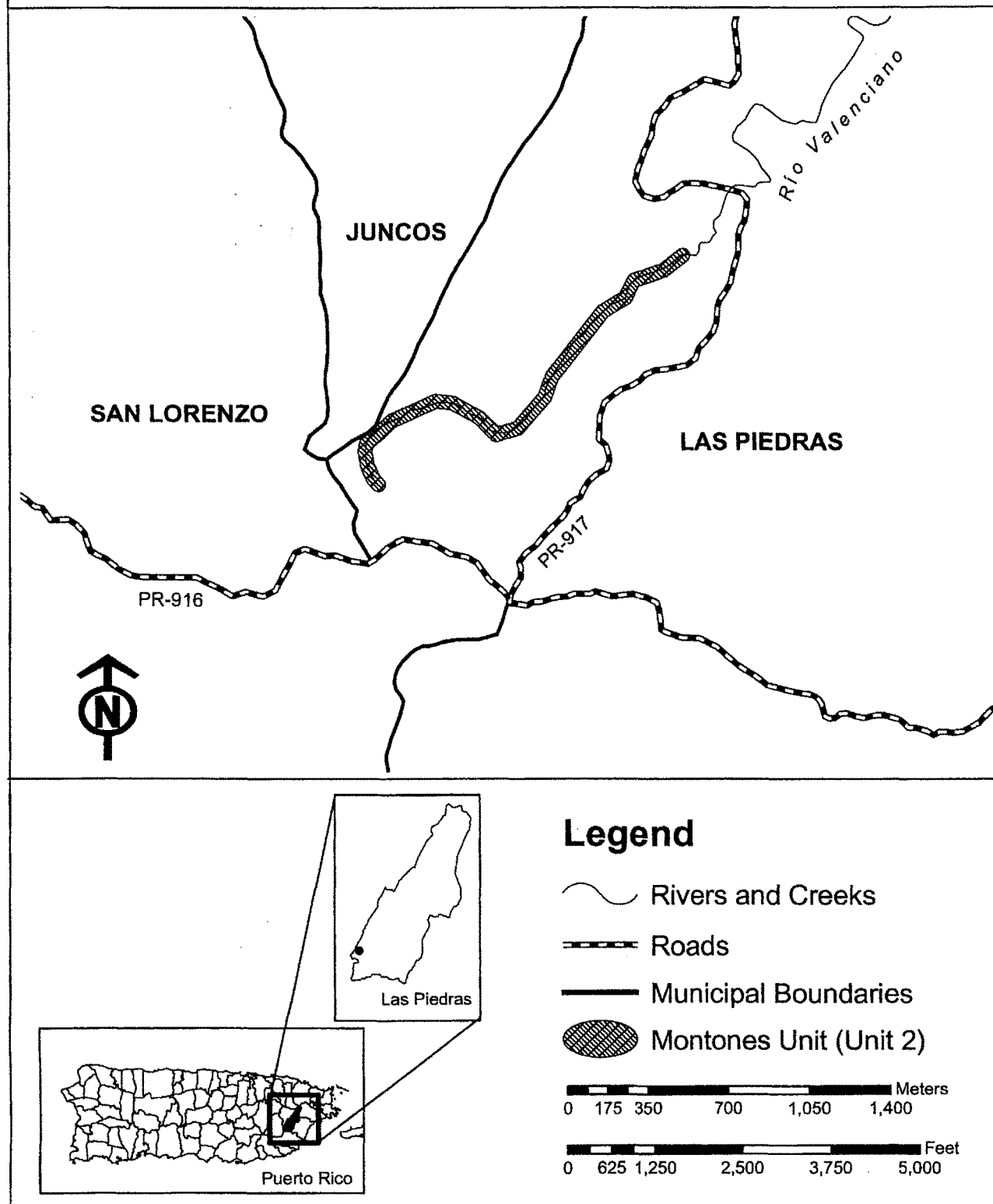
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(iii) *Note*: Map of Unit 2 (Map 3) follows:

BILLING CODE 4310-55-P

MAP 3. Proposed Critical Habitat for the Guajón: Montones Unit: Montones Ward, Las Piedras, Puerto Rico



(8) Unit 3: Tejas, Las Piedras, Puerto Rico.

(i) *General Description*: Unit 3 consists of approximately 5.2 ac (2.1 ha) between Road PR-905 to the east, Road PR-908 to the west, Road PR-9921 to the north, and Road PR-9904 to the south within Tejas Ward, Las Piedras.

(ii) *Coordinates*: From Yabucoa, Humacao, Juncos, and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 3 bounded by the following UTM 19 NAD 83 coordinates (E, N): 829623.13, 2007423.98; 829623.16, 2007425.95; 829623.32, 2007427.91; 829623.60, 2007429.85; 829624.02, 2007431.77; 829624.56, 2007433.66; 829625.22, 2007435.51; 829626.00, 2007437.32; 829626.90, 2007439.06; 829627.90, 2007440.75; 829629.02, 2007442.37; 829629.38, 2007442.84; 829643.74, 2007461.45; 829644.61, 2007462.52; 829645.93, 2007463.98; 829647.34, 2007465.35; 829648.84, 2007466.62; 829650.41, 2007467.79; 829652.06, 2007468.86; 829653.78, 2007469.81; 829654.23, 2007470.04; 829665.53, 2007475.61; 829666.85, 2007476.23; 829668.68, 2007476.95; 829670.55, 2007477.55; 829672.46, 2007478.03; 829674.39, 2007478.39; 829676.34, 2007478.61; 829678.31, 2007478.71; 829680.27, 2007478.68; 829682.23, 2007478.52; 829682.50, 2007478.49; 829698.24, 2007476.54; 829699.91, 2007476.28; 829701.83, 2007475.87; 829703.72, 2007475.33; 829705.57, 2007474.67; 829707.37, 2007473.89; 829709.12, 2007472.99; 829710.81, 2007471.98; 829712.42, 2007470.87; 829713.96, 2007469.65; 829715.42, 2007468.33; 829716.79, 2007466.92; 829718.06, 2007465.42; 829719.23, 2007463.84; 829720.30, 2007462.19; 829721.25, 2007460.47; 829722.09, 2007458.70; 829722.82, 2007456.87; 829723.42, 2007455.00; 829723.52,

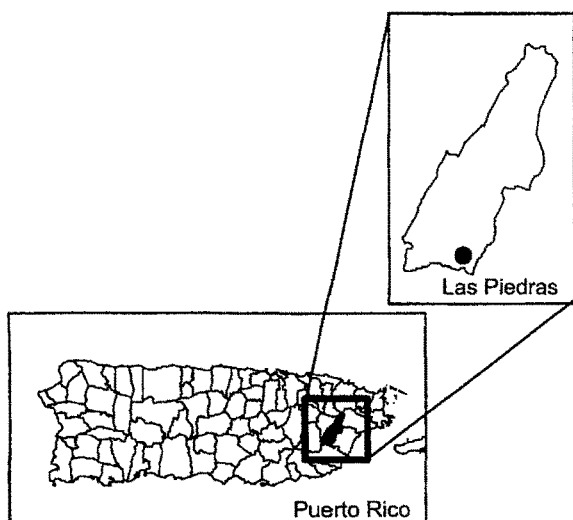
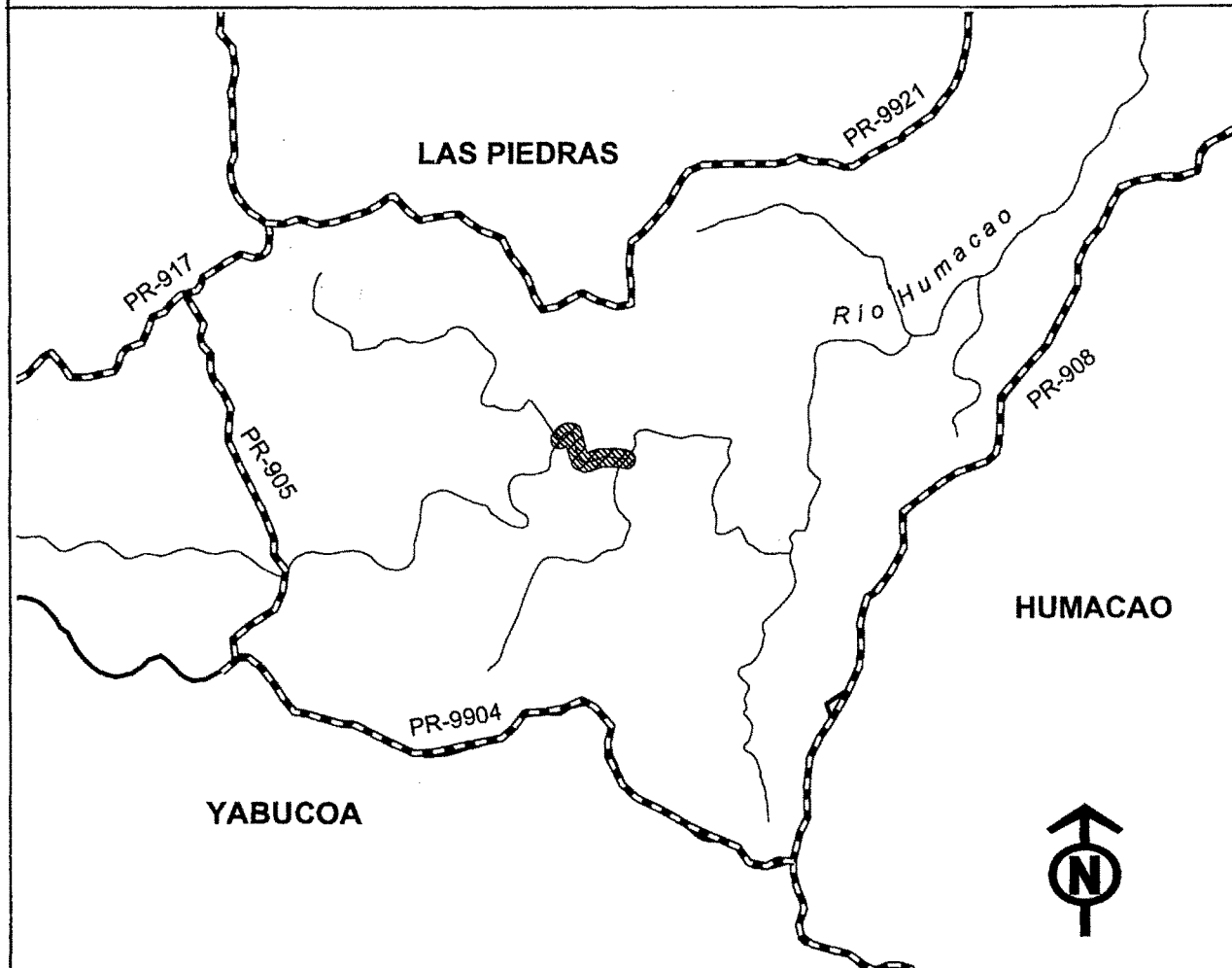
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829741.38, 2007318.78; 829739.42, 2007318.81; 829737.46, 2007318.97; 829735.51, 2007319.25; 829733.59, 2007319.67; 829731.70, 2007320.21; 829729.98, 2007320.82; 829709.83, 2007328.66; 829709.70, 2007328.71; 829707.90, 2007329.49; 829706.15, 2007330.39; 829704.46, 2007331.40; 829702.85, 2007332.51; 829701.31, 2007333.73; 829699.85, 2007335.05; 829698.48, 2007336.46; 829697.21, 2007337.96; 829696.04, 2007339.54; 829694.98, 2007341.19; 829694.02, 2007342.91; 829693.18, 2007344.68; 829692.46, 2007346.51; 829692.04, 2007347.75; 829679.00, 2007389.82; 829678.81, 2007390.45; 829678.71, 2007390.79; 829675.10, 2007404.00; 829674.74, 2007403.62; 829673.33, 2007402.26; 829671.83, 2007400.98; 829670.25, 2007399.81; 829668.60, 2007398.75; 829666.89, 2007397.79; 829665.11, 2007396.95; 829663.28, 2007396.23; 829661.41, 2007395.62; 829659.51, 2007395.15; 829657.57, 2007394.79; 829655.62, 2007394.57; 829653.66, 2007394.47; 829651.69, 2007394.50; 829649.74, 2007394.66; 829647.79, 2007394.95; 829645.87, 2007395.36; 829643.98, 2007395.90; 829642.13, 2007396.56; 829640.33, 2007397.34; 829638.58, 2007398.24; 829636.89, 2007399.25; 829635.28, 2007400.36; 829633.74, 2007401.58; 829632.28, 2007402.90; 829630.91, 2007404.31; 829629.64, 2007405.81; 829628.47, 2007407.39; 829627.40, 2007409.04; 829626.45, 2007410.76; 829625.61, 2007412.53; 829624.88, 2007414.36; 829624.28, 2007416.23; 829623.80, 2007418.14; 829623.45, 2007420.07; 829623.22, 2007422.02; 829623.13, 2007423.98.





(iii) *Note*: Map of Unit 3 (Map 4) follows:

BILLING CODE 4310-55-P

MAP 4. Proposed Critical Habitat for the Guajón: Tejas Unit: Tejas Ward, Las Piedras, Puerto Rico



Legend

-  Rivers and Creeks
 -  Roads
 -  Municipal Boundaries
 -  Tejas Unit (Unit 3)
- 0 175 350 700 1,050 1,400 Meters
- 0 625 1,250 2,500 3,750 5,000 Feet

(9) Unit 4: Emajagua, Maunabo, Puerto Rico.

(i) *General Description*: Unit 4 consists of approximately 33.0 ac (13.4 ha) between Quebrada Arenas and Quebrada Emajagua, north of Road PR-901 within Emajagua Ward, Maunabo.

(ii) *Coordinates*: From Yabucoa and Punta Guayanés USGS 1:20,000 quadrangle maps. Unit 4 bounded by the following UTM 19 NAD 83 coordinates (E, N): 830301.03,

1993842.17; 830301.06, 1993844.14; 830301.22, 1993846.10; 830301.51, 1993848.04; 830301.93, 1993849.96; 830302.46, 1993851.85; 830303.12, 1993853.70; 830303.91, 1993855.50; 830304.80, 1993857.25; 830305.10, 1993857.77; 830382.85, 1993991.51; 830383.56, 1993992.68; 830384.68, 1993994.30; 830385.90, 1993995.83; 830387.22, 1993997.29; 830388.63, 1993998.66; 830389.55, 1993999.46; 830491.53, 1994084.69; 830602.31, 1994239.62; 830670.30, 1994401.70; 830645.67, 1994534.02; 830645.49, 1994535.09; 830645.27, 1994537.04; 830645.17, 1994539.01; 830645.20, 1994540.97; 830645.36, 1994542.93; 830645.65, 1994544.87; 830646.06, 1994546.79; 830646.60, 1994548.68; 830647.26, 1994550.53; 830648.04, 1994552.34; 830648.94, 1994554.09; 830649.02, 1994554.22; 830603.53, 1994664.55; 830603.03, 1994665.86; 830602.43, 1994667.73; 830601.95, 1994669.64; 830601.59, 1994671.57; 830601.37, 1994673.52; 830601.27, 1994675.49; 830601.30, 1994677.45; 830601.46, 1994679.41; 830601.75, 1994681.35; 830602.16, 1994683.28; 830602.70, 1994685.17; 830603.36, 1994687.02; 830604.14, 1994688.82; 830605.04, 1994690.57; 830606.05, 1994692.25; 830607.17, 1994693.87; 830608.39, 1994695.41; 830609.71, 1994696.87; 830611.12, 1994698.23; 830612.62, 1994699.51; 830614.19, 1994700.68; 830615.84, 1994701.74; 830617.56, 1994702.70; 830619.34, 1994703.54; 830621.17, 1994704.26; 830623.04, 1994704.86; 830624.94, 1994705.34; 830626.87, 1994705.70; 830628.83, 1994705.92; 830630.79, 1994706.02; 830632.75, 1994705.99; 830634.71, 1994705.83; 830636.66, 1994705.54; 830638.58, 1994705.13; 830640.47, 1994704.59; 830642.32, 1994703.93; 830644.12, 1994703.15; 830645.87, 1994702.25; 830647.56, 1994701.24; 830649.17, 1994700.12; 830650.71, 1994698.90; 830652.17, 1994697.58; 830653.54, 1994696.17; 830654.81, 1994694.67; 830655.98, 1994693.10; 830657.04, 1994691.45; 830658.00, 1994689.73; 830658.84, 1994687.95; 830659.06, 1994687.44; 830706.46, 1994572.47; 830780.50, 1994437.89; 830780.89, 1994437.15;

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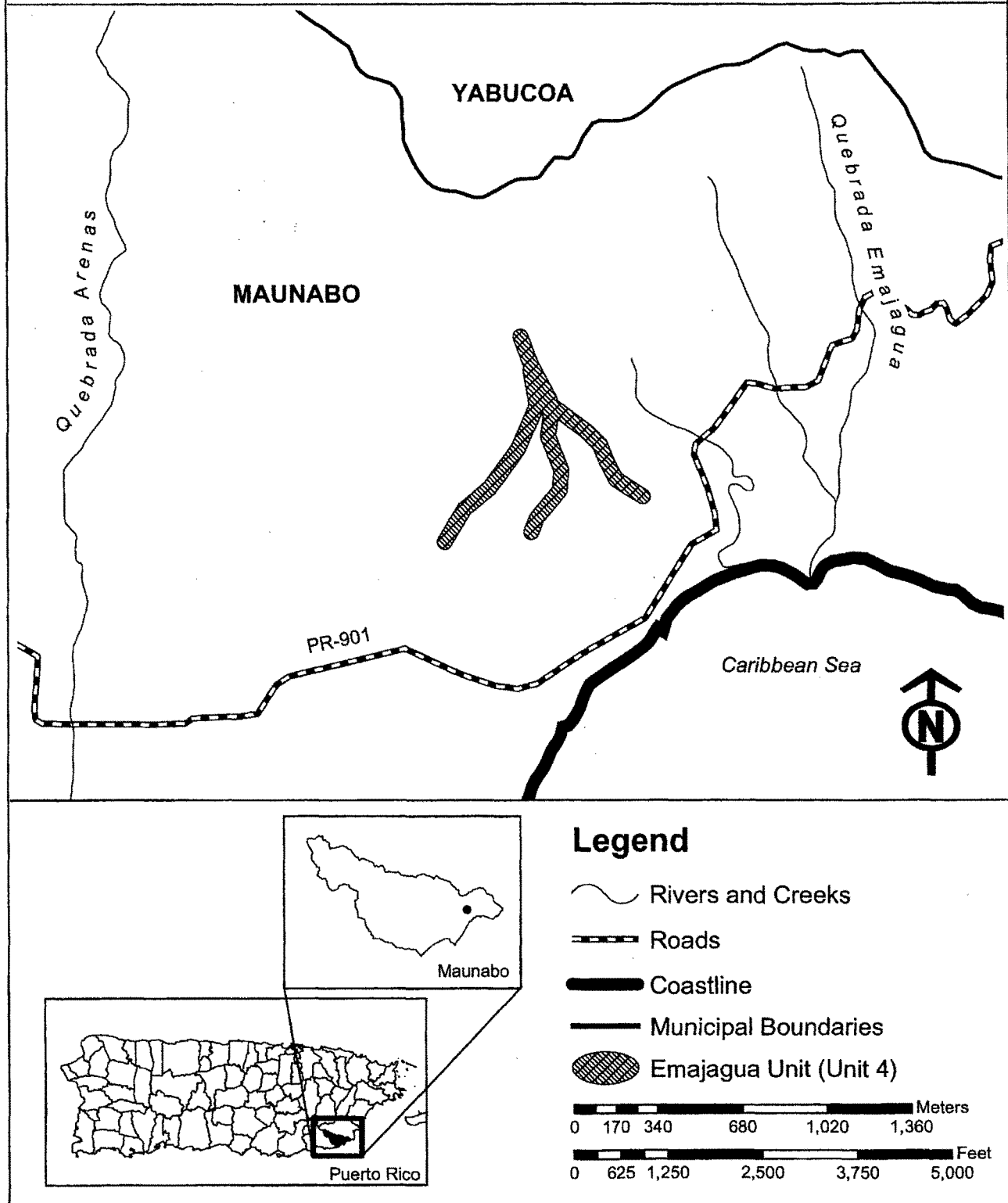
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830301.03, 1993842.17.

(iii) **Note:** Map of Unit 4 (Map 5)
follows:

BILLING CODE 4310-55-P

MAP 5. Proposed Critical Habitat for the Guajón: Emajagua Unit: Emajagua Ward, Maunabo, Puerto Rico



(10) Unit 5: Jacoboa, Patillas, Puerto Rico.

(i) *General Description*: Unit 5 consists of approximately 10.3 ac (4.2 ha) northwest of road PR-758 within Ríos Ward, Patillas.

(ii) *Coordinates*: From Yabucoa and Punta Tuna USGS 1:20,000 quadrangle maps. Unit 5 bounded by the following UTM 19 NAD 83 coordinates (E, N): 820101.76, 1993627.91; 820101.80, 1993629.87; 820101.96, 1993631.83; 820102.25, 1993633.77; 820102.66, 1993635.69; 820103.20, 1993637.58; 820103.86, 1993639.43; 820104.64, 1993641.24; 820105.54, 1993642.98; 820106.55, 1993644.67; 820107.67, 1993646.28; 820108.89, 1993647.82; 820110.21, 1993649.28; 820111.62, 1993650.65; 820113.12, 1993651.92; 820114.70, 1993653.09; 820116.35, 1993654.15; 820118.07, 1993655.11; 820119.84, 1993655.95; 820121.67, 1993656.67; 820123.54, 1993657.27; 820125.45, 1993657.75; 820127.38, 1993658.10; 820129.33, 1993658.32; 820131.30, 1993658.42; 820133.26, 1993658.39; 820135.22, 1993658.23; 820137.16, 1993657.94; 820139.08, 1993657.52; 820140.97, 1993656.98; 820142.82, 1993656.32; 820144.62, 1993655.54; 820146.37, 1993654.64; 820148.06, 1993653.63; 820149.67, 1993652.51; 820149.79, 1993652.43; 820252.55, 1993575.46; 820252.92, 1993575.18; 820351.83, 1993498.67;

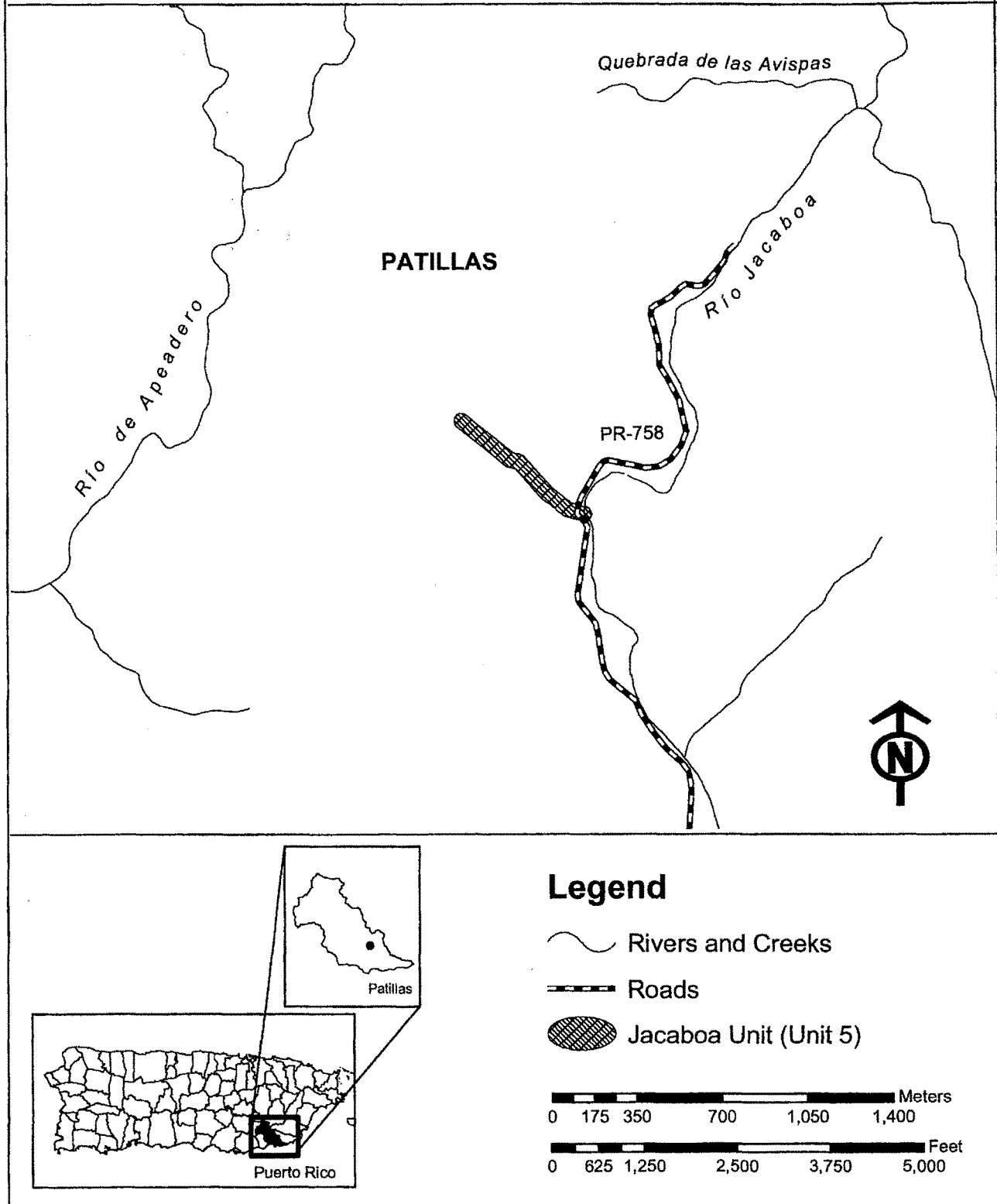
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(iii) **Note**: Map of Unit 5 (Map 6) follows:

BILLING CODE 4310-55-P

MAP 6. Proposed Critical Habitat for the Guajón: Jacaboa Unit: Ríos Ward, Patillas, Puerto Rico



(11) Unit 6: Calabazas, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 6 consists of approximately 13.8 ac (5.6 ha), including lands northeast of road PR-900, between Quebrada Guayabo to the south and Río Guayanés to the north, and south of Guayanés Unit, within Calabazas Ward, Yabucoa.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 6 bounded by the following UTM 19 NAD 83 coordinates (E, N): 825303.81, 1999020.54; 825324.29, 1999071.68; 825361.95, 1999106.10; 825427.53, 1999113.37; 825493.52, 1999090.98; 825544.83, 1999057.79; 825546.92, 1999059.93; 825572.78, 1999028.51; 825577.55, 1998990.44; 825576.37, 1998922.62; 825547.19, 1998888.32; 825518.03, 1998851.89; 825465.30, 1998834.21; 825446.21, 1998836.06; 825416.29, 1998854.72; 825377.77, 1998881.73; 825354.21, 1998900.47; 825325.99, 1998948.81; 825303.81, 1999020.54.

(iii) **Note**: The map depicting Unit 6 is provided at paragraph (12)(iii) of this entry.

(12) Unit 7: Guayanés, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 7 consists of approximately 7.9 ac (3.2 ha) northeast of Road PR-900 between Quebrada Guayabo to the south and Río Guayanés to the north, and north of Unit 6, within Calabazas Ward, Yabucoa.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 7 bounded by the following UTM 19 NAD 83 coordinates (E, N): 825269.89, 1999257.75; 825269.92, 1999259.72;

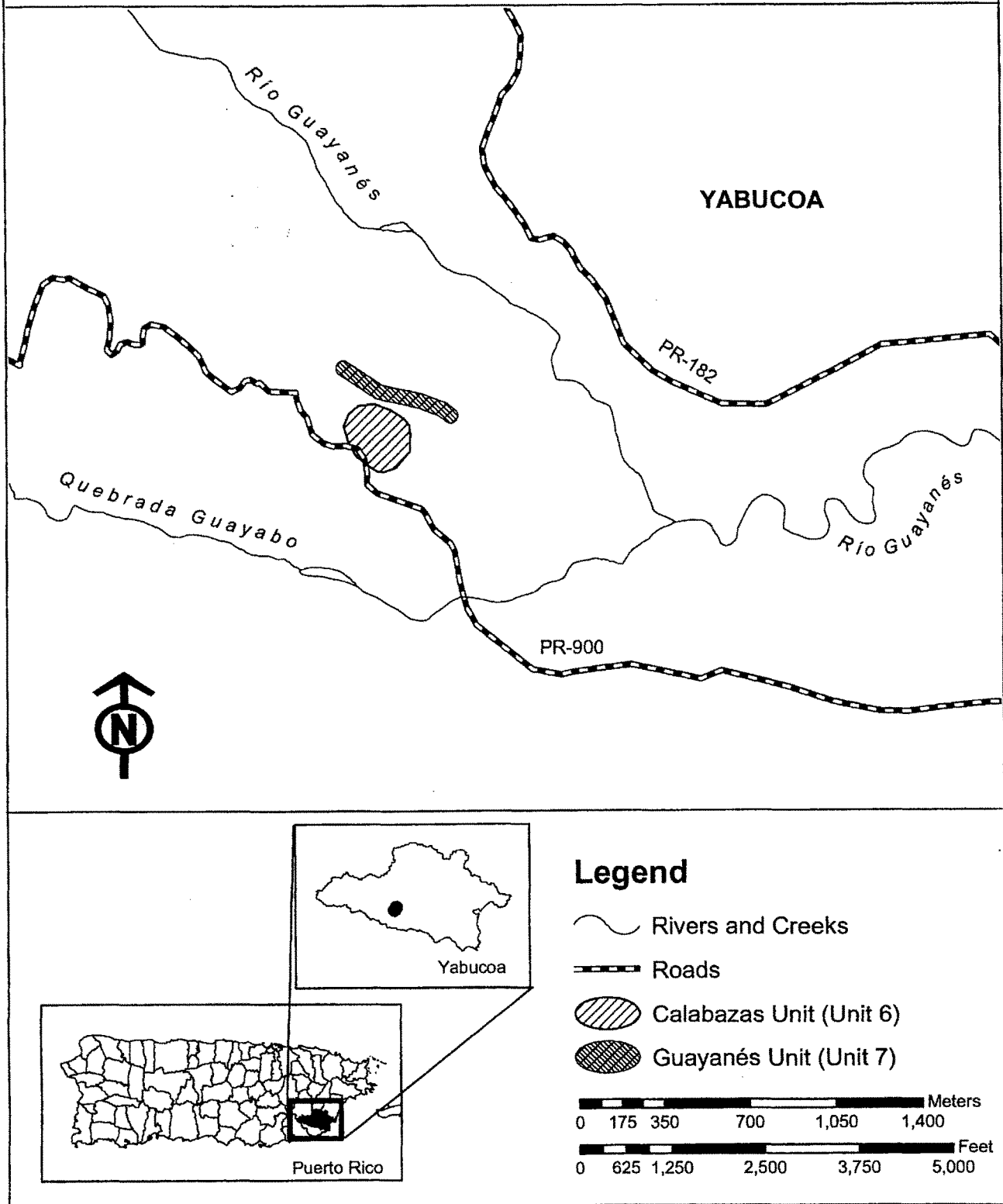
825270.08, 1999261.68; 825270.37, 1999263.62; 825270.78, 1999265.54; 825271.32, 1999267.43; 825271.98, 1999269.28; 825272.76, 1999271.09; 825273.66, 1999272.83; 825274.67, 1999274.52; 825275.79, 1999276.13; 825277.01, 1999277.67; 825278.33, 1999279.13; 825279.74, 1999280.50; 825281.24, 1999281.77; 825282.82, 1999282.94; 825284.47, 1999284.01; 825286.19, 1999284.96; 825287.96, 1999285.80; 825289.79, 1999286.52; 825291.66, 1999287.13; 825293.57, 1999287.60; 825295.50, 1999287.96; 825297.45, 1999288.18; 825299.41, 1999288.28; 825301.38, 1999288.25; 825303.34, 1999288.09; 825305.28, 1999287.80; 825307.20, 1999287.38; 825309.09, 1999286.85; 825310.94, 1999286.18; 825312.74, 1999285.40; 825314.49, 1999284.51; 825316.18, 1999283.50; 825316.22, 1999283.47; 825459.03, 1999191.10; 825625.66, 1999156.49; 825626.84, 1999156.22; 825628.73, 1999155.68; 825629.63, 1999155.37; 825721.19, 1999122.74; 825722.14, 1999122.38; 825723.95, 1999121.60; 825725.69, 1999120.71; 825727.38, 1999119.70; 825728.99, 1999118.58; 825729.55, 1999118.16; 825761.67, 1999093.18; 825762.66, 1999092.38; 825764.12, 1999091.06; 825765.49, 1999089.65; 825766.76, 1999088.15; 825767.93, 1999086.57; 825768.99, 1999084.92; 825769.95, 1999083.20; 825770.79, 1999081.43; 825771.51, 1999079.60; 825772.11, 1999077.73; 825772.59, 1999075.82; 825772.94, 1999073.89; 825773.17, 1999071.94; 825773.27, 1999069.98; 825773.23, 1999068.01; 825773.07, 1999066.05; 825772.79, 1999064.11;

825772.37, 1999062.19; 825771.83, 1999060.30; 825771.17, 1999058.45; 825770.39, 1999056.65; 825769.49, 1999054.90; 825768.48, 1999053.21; 825767.37, 1999051.60; 825766.15, 1999050.06; 825764.83, 1999048.60; 825763.41, 1999047.23; 825761.92, 1999045.96; 825760.34, 1999044.79; 825758.69, 1999043.72; 825756.97, 1999042.77; 825755.19, 1999041.93; 825753.37, 1999041.21; 825751.50, 1999040.60; 825749.59, 1999040.13; 825747.66, 1999039.77; 825745.71, 1999039.55; 825743.74, 1999039.45; 825741.78, 1999039.48; 825739.82, 1999039.64; 825737.88, 1999039.93; 825735.96, 1999040.35; 825734.07, 1999040.89; 825732.22, 1999041.55; 825730.41, 1999042.33; 825728.66, 1999043.22; 825726.98, 1999044.23; 825725.36, 1999045.35; 825724.81, 1999045.77; 825696.49, 1999067.79; 825611.42, 1999098.11; 825441.33, 1999133.44; 825440.15, 1999133.71; 825438.26, 1999134.25; 825436.41, 1999134.91; 825434.60, 1999135.69; 825432.86, 1999136.59; 825431.17, 1999137.60; 825431.13, 1999137.62; 825283.60, 1999233.04; 825282.03, 1999234.13; 825280.49, 1999235.35; 825279.04, 1999236.67; 825277.67, 1999238.08; 825276.40, 1999239.58; 825275.23, 1999241.16; 825274.16, 1999242.81; 825273.21, 1999244.53; 825272.37, 1999246.30; 825271.64, 1999248.13; 825271.04, 1999250.00; 825270.56, 1999251.91; 825270.21, 1999253.84; 825269.99, 1999255.79; 825269.89, 1999257.75.

(iii) **Note**: Map of Units 6 and 7 (Map 7) follows:

BILLING CODE 4310-55-P

MAP 7. Proposed Critical Habitat for the Guajón:Calabazas and Guayanés Units: Calabazas Ward, Yabucoa, Puerto Rico



(13) Unit 8: Panduras, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 8 consists of approximately 28.6 ac (11.6 ha) to the northwest and southeast of Road PR-3 within Calabazas Ward, Yabucoa, and 18.2 ac (7.4 ha) of lands owned by the Puerto Rico Conservation Trust near the top of Cerro La Pandura.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 8 bounded by the following UTM 19 NAD 83 coordinates (E, N): 827566.07, 1997348.94; 827566.10, 1997350.90; 827566.26, 1997352.86; 827566.55, 1997354.81; 827566.96, 1997356.73; 827567.50, 1997358.62; 827568.16, 1997360.47; 827568.94, 1997362.27; 827569.84, 1997364.02; 827570.13, 1997364.53; 827611.88, 1997436.35; 827612.60, 1997437.52; 827613.72, 1997439.14; 827614.94, 1997440.68; 827616.26, 1997442.13; 827617.67, 1997443.50; 827619.16, 1997444.77; 827620.74, 1997445.94; 827622.39, 1997447.01; 827624.11, 1997447.96; 827625.89, 1997448.80; 827627.71, 1997449.53; 827629.58, 1997450.13; 827631.49, 1997450.61; 827633.42, 1997450.96; 827635.38, 1997451.18; 827637.34, 1997451.28; 827639.30, 1997451.25; 827641.26, 1997451.09; 827643.20, 1997450.80; 827645.13, 1997450.39; 827647.02, 1997449.85; 827648.87, 1997449.19; 827650.67, 1997448.41; 827652.42, 1997447.51; 827654.10, 1997446.50; 827655.72, 1997445.38; 827657.26, 1997444.16; 827658.72, 1997442.84; 827660.08, 1997441.43; 827661.35, 1997439.93; 827662.53, 1997438.36; 827663.59, 1997436.70; 827664.55, 1997434.99; 827665.39, 1997433.21; 827666.11, 1997431.38; 827666.71, 1997429.51; 827667.19, 1997427.61; 827667.54, 1997425.68; 827667.77, 1997423.72; 827667.86, 1997421.76; 827667.83, 1997419.80; 827667.67, 1997417.84; 827667.39, 1997415.89; 827666.97, 1997413.97; 827666.43, 1997412.08; 827665.77, 1997410.23; 827664.99, 1997408.43; 827664.09, 1997406.68; 827663.80, 1997406.17; 827627.55, 1997343.81; 827640.42, 1997269.96; 827711.77, 1997123.84; 827786.66, 1997042.73; 827883.73, 1996967.26; 827884.71, 1996966.46; 827886.17, 1996965.14; 827887.54, 1996963.73; 827888.44, 1996962.69; 827912.27, 1996933.87; 827952.33, 1996988.85; 827952.47, 1996989.05; 827953.69, 1996990.59; 827955.01, 1996992.05; 827956.43, 1996993.41; 827957.92, 1996994.69; 827959.50, 1996995.86; 827961.15, 1996996.92; 827962.87, 1996997.88; 827964.64, 1996998.72; 827966.47, 1996999.44; 827968.34, 1997000.04; 827968.39, 1997000.06; 828042.04, 1997020.99; 828043.90,

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(iii) **Note**: The map depicting Unit 8 is provided at paragraph (14)(iii) of this entry.

(14) Unit 9: Talante, Yabucoa-Maunabo, Puerto Rico.

(i) *General Description*: Unit 9 consists of approximately 23.5 ac (9.5 ha) east of Road PR-3, including the headwaters of the Talante Creek and five unnamed drainages. About 2.8 ac (1.1 ha) of Unit 9 are located within Calabazas Ward, Yabucoa, and the remaining 21.6 ac (8.7 ha) are located within Talante Ward, Maunabo.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 9 bounded by the following UTM 19 NAD 83 coordinates (E, N): 827501.36, 1996260.52; 827501.40, 1996262.48; 827501.41, 1996262.67; 827503.20, 1996295.22; 827502.70, 1996331.19; 827502.73, 1996333.01; 827504.51, 1996371.21; 827504.52, 1996371.27; 827504.68, 1996373.23; 827504.96, 1996375.18; 827505.38, 1996377.10; 827505.92, 1996378.99; 827506.58, 1996380.84; 827506.64, 1996380.97; 827506.08, 1996421.48; 827506.11, 1996423.36; 827506.11, 1996423.48; 827507.89, 1996457.21; 827507.49, 1996486.28; 827507.52, 1996488.16; 827507.68, 1996490.12; 827507.97, 1996492.06; 827508.39, 1996493.99; 827508.93, 1996495.87; 827509.59, 1996497.73; 827510.37, 1996499.53; 827511.26, 1996501.28; 827512.08, 1996502.66; 827524.53, 1996522.50; 827524.72, 1996522.80; 827525.84, 1996524.42; 827527.06, 1996525.96; 827528.38, 1996527.41; 827529.79, 1996528.78; 827531.28, 1996530.04; 827548.77, 1996543.95; 827551.50, 1996556.77; 827550.16, 1996581.70; 827550.12, 1996582.81; 827550.15, 1996584.77; 827550.31, 1996586.73; 827550.60, 1996588.68; 827551.01, 1996590.60; 827551.01, 1996590.60; 827551.55, 1996592.49; 827552.11, 1996594.08; 827562.90, 1996622.18; 827570.11, 1996645.71; 827570.06, 1996646.71; 827570.05, 1996647.35; 827570.13, 1996664.90; 827554.06, 1996695.96; 827554.02, 1996696.03; 827553.61, 1996696.87; 827529.60, 1996747.39; 827529.18, 1996748.32; 827528.45, 1996750.15; 827527.85, 1996752.02; 827527.37, 1996753.93; 827527.02, 1996755.86; 827526.80, 1996757.81; 827526.70, 1996759.77; 827526.70, 1996761.01; 827528.06, 1996816.12; 827528.09, 1996816.85; 827528.25, 1996818.81; 827528.53,

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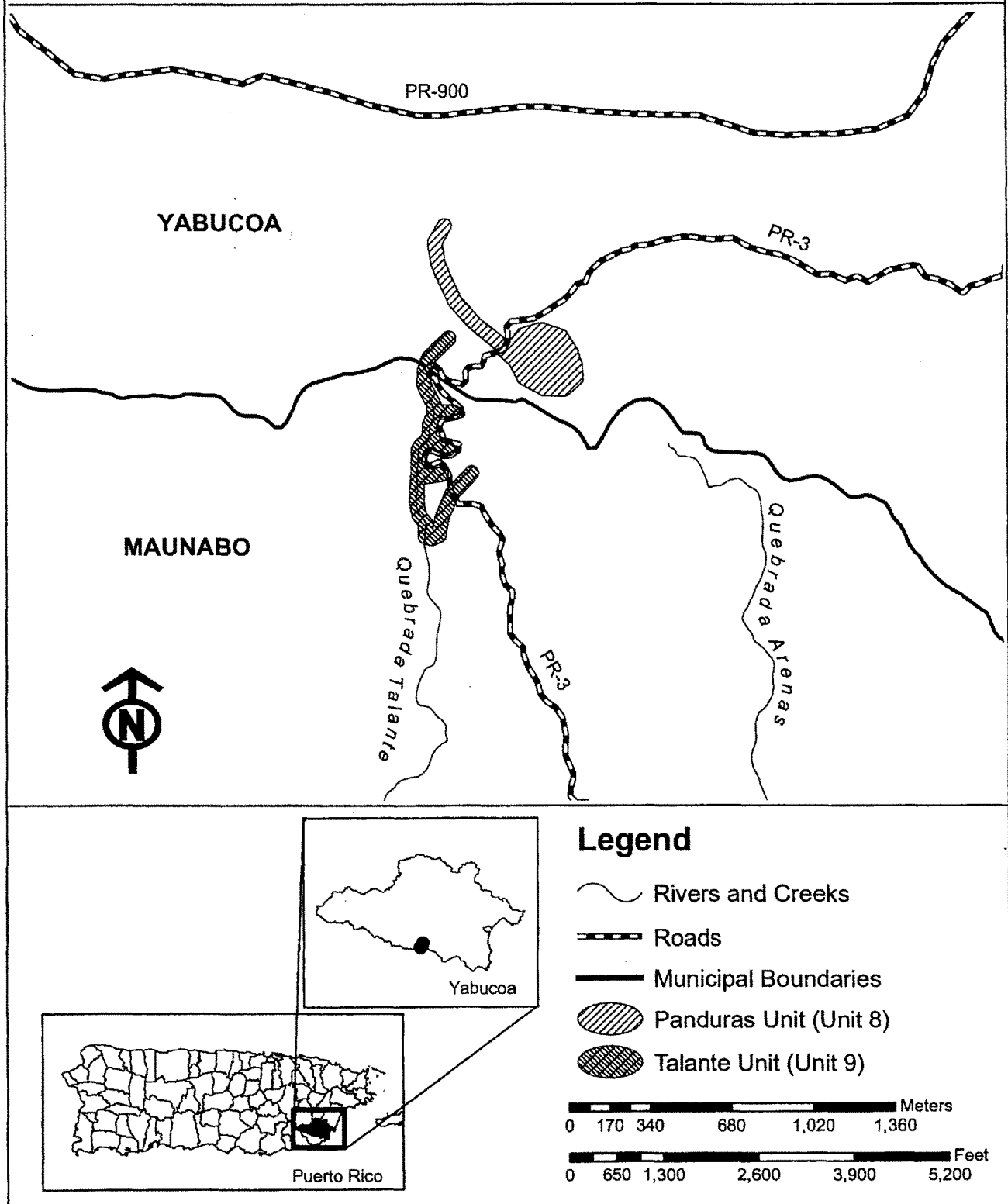
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(iii) **Note:** Map of Units 8 and 9 (Map 8) follows:

BILLING CODE 4310-55-P

MAP 8. Proposed Critical Habitat for the Guajón: Panduras and Talante Units: Calabazas Ward, Yabucoa and Talante Ward, Maunabo, Puerto Rico



(15) Unit 10: Guayabota, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 10 consists of approximately 13.1 ac (5.3 ha) to the northeast of intersection of roads PR-181 to the east, and PR-182 and Río Guayanés to the south, and south of the municipal boundary with San Lorenzo, within Guayabota Ward, Yabucoa.

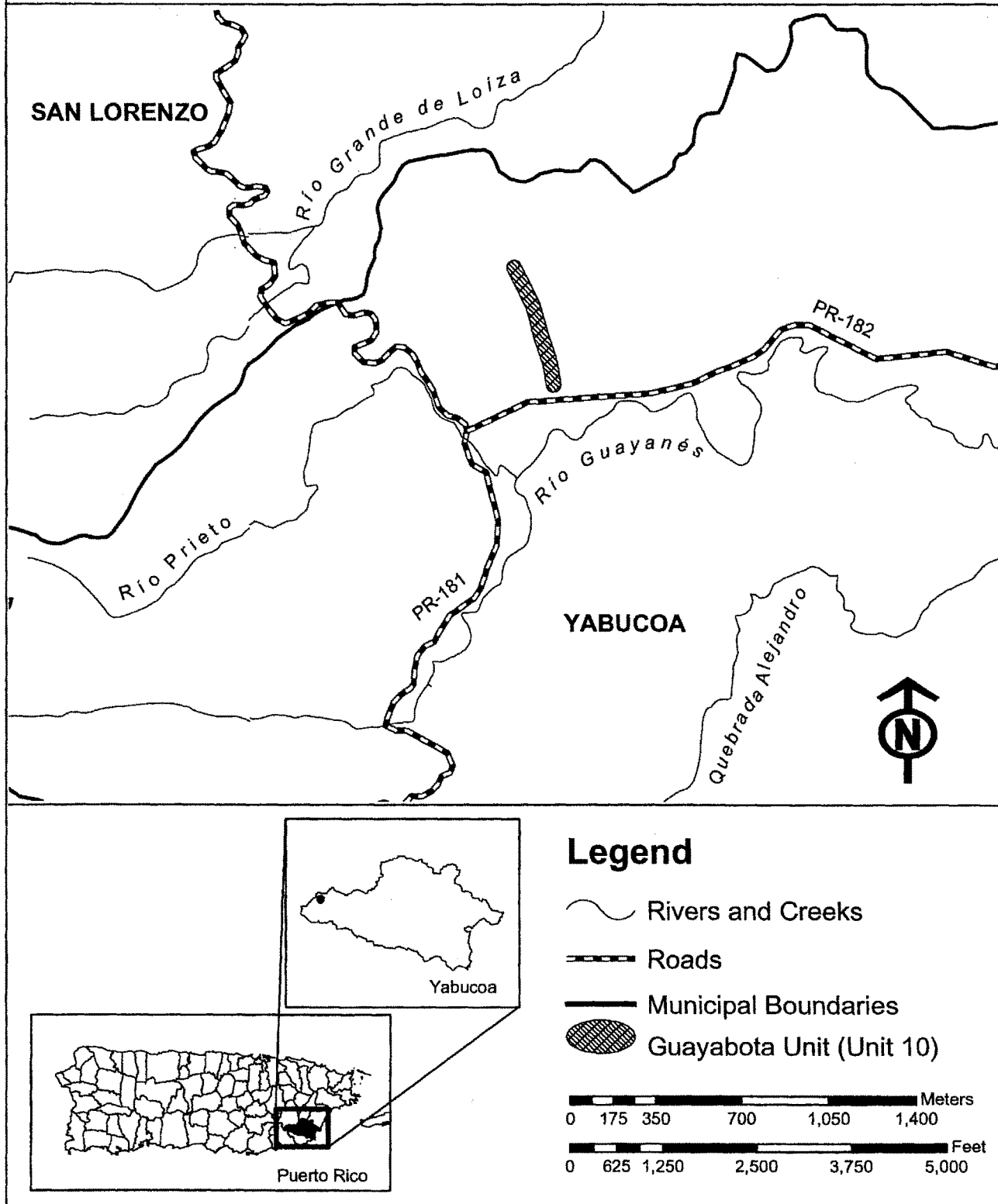
(ii) *Coordinates*: From Yabucoa and Patillas USGS 1:20,000 quadrangle maps. Unit 10 bounded by the following UTM 19 NAD 83 coordinates (E, N): 818663.90, 2001950.98; 818669.55, 2002001.91; 818692.20, 2002048.84; 818715.15, 2002074.58; 818757.13, 2002102.71; 818816.53, 2002097.18; 818863.37, 2002080.88; 818903.97, 2002056.02; 818923.80, 2002001.21; 818925.95, 2001999.12; 818936.95,

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(iii) **Note**: Map of Unit 10 (Map 9) follows:

BILLING CODE 4310-55-P

MAP 9. Proposed Critical Habitat for the Guajón: Guayabota Unit: Guayabota Ward, Yabucoa, Puerto Rico



(16) Unit 11: Guayabito, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 11 consists of approximately 17.3 ac (7.0 ha) south of Road PR-900 and north of the Maunabo boundary, within Guayabota Ward, Yabucoa.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 11 bounded by the following UTM 19 NAD 83 coordinates (E, N): 822520.09, 1998835.84; 822520.13, 1998837.81; 822520.29, 1998839.76; 822520.57, 1998841.71; 822520.99, 1998843.63; 822521.53, 1998845.52; 822522.19, 1998847.37; 822522.97, 1998849.17; 822523.87, 1998850.92; 822524.88, 1998852.61; 822526.00, 1998854.22; 822527.22, 1998855.76; 822528.54, 1998857.22; 822529.95, 1998858.58; 822531.45, 1998859.85; 822533.03, 1998861.02; 822534.68, 1998862.09; 822536.39, 1998863.04; 822538.17, 1998863.88; 822540.00, 1998864.61; 822541.87, 1998865.21; 822543.77, 1998865.69; 822545.32, 1998865.98; 822611.77, 1998876.73; 822655.55, 1998901.23; 822685.38, 1998957.12; 822733.68, 1999416.01; 822733.71, 1999416.30; 822734.00, 1999418.24; 822734.41, 1999420.16; 822734.95, 1999422.05; 822735.61, 1999423.90; 822736.39, 1999425.71; 822737.29, 1999427.45; 822738.30, 1999429.14; 822738.30, 1999429.14; 822739.42, 1999430.76; 822740.64, 1999432.30; 822741.96, 1999433.75; 822743.37, 1999435.12; 822744.87, 1999436.39; 822746.45, 1999437.56; 822746.45, 1999437.56; 822748.10, 1999438.62; 822749.81, 1999439.58; 822751.59, 1999440.42; 822753.42, 1999441.14; 822755.29, 1999441.74; 822757.19, 1999442.22; 822759.13, 1999442.57; 822761.08, 1999442.80; 822763.04, 1999442.89; 822765.01, 1999442.86; 822766.97, 1999442.70; 822768.91, 1999442.41; 822770.83, 1999442.00; 822772.72, 1999441.46; 822774.57, 1999440.80; 822776.37, 1999440.02; 822778.12, 1999439.12; 822779.81, 1999438.11; 822779.81, 1999438.11; 822781.42, 1999436.99; 822782.96, 1999435.77; 822783.85, 1999434.99; 822805.32, 1999415.26; 822805.89, 1999414.73; 822807.26, 1999413.32; 822808.53, 1999411.82; 822809.70, 1999410.24; 822810.76, 1999408.59; 822811.72, 1999406.87; 822812.56, 1999405.10; 822813.28, 1999403.27; 822813.88, 1999401.40; 822814.36, 1999399.49; 822814.71, 1999397.56; 822814.94, 1999395.61; 822815.03, 1999393.64; 822815.04, 1999393.56; 822815.59, 1999353.44; 822834.40, 1999326.93; 822859.47, 1999302.21; 822860.64, 1999300.99; 822861.91, 1999299.49; 822863.08, 1999297.91; 822864.14, 1999296.26; 822865.10,

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(iii) *Note*: The map depicting Unit 11 is provided at paragraph (17)(iii) of this entry.

(17) Unit 12: Guayabo, Yabucoa, Puerto Rico.

(i) *General Description*: Unit 12 consists of approximately 9.8 ac (3.9 ha) within Guayabota Ward, Yabucoa, crossing Road PR-900, north of the Maunabo boundary, and about 3,025 ft (922 m) west of Unit 11.

(ii) *Coordinates*: From Yabucoa USGS 1:20,000 quadrangle map. Unit 12 is bounded by the following UTM 19 NAD 83 coordinates (E, N): 821249.15, 1999215.02; 821249.18, 1999216.98; 821249.34, 1999218.94; 821249.63, 1999220.88; 821250.04, 1999222.80; 821250.19, 1999223.36; 821255.15, 1999241.68; 821255.54, 1999243.01; 821256.21, 1999244.86; 821256.99, 1999246.67; 821257.88, 1999248.41; 821258.89, 1999250.10; 821260.01, 1999251.72; 821261.23, 1999253.25; 821262.55, 1999254.71; 821263.97, 1999256.08; 821265.46, 1999257.35; 821267.04, 1999258.52; 821268.69, 1999259.58; 821270.41, 1999260.54; 821272.19, 1999261.38; 821274.01, 1999262.10; 821275.88, 1999262.70; 821276.77, 1999262.94; 821304.05, 1999269.84; 821305.07, 1999270.08; 821307.00, 1999270.43; 821308.01, 1999270.56; 821349.11, 1999275.25; 821350.61, 1999289.71; 821339.99, 1999325.55; 821339.91, 1999325.83; 821339.43, 1999327.74; 821339.08, 1999329.67; 821338.85, 1999331.62; 821338.76, 1999333.59; 821338.79, 1999335.55; 821338.95, 1999337.51; 821338.97, 1999337.72; 821342.49, 1999366.45; 821342.75, 1999368.18; 821343.16, 1999370.10; 821343.70, 1999371.99; 821344.36, 1999373.84; 821345.15, 1999375.64; 821346.04, 1999377.39; 821347.05, 1999379.08; 821348.17, 1999380.69; 821349.39, 1999382.23; 821350.71, 1999383.69; 821352.12, 1999385.05; 821353.62, 1999386.32; 821355.20, 1999387.50; 821356.85, 1999388.56; 821358.57, 1999389.51; 821359.49, 1999389.97; 821386.84, 1999402.86; 821418.08, 1999420.93; 821419.39, 1999421.65; 821421.17, 1999422.49; 821423.00, 1999423.21; 821424.87, 1999423.81; 821426.77, 1999424.29; 821428.71, 1999424.64; 821430.66, 1999424.86; 821432.62, 1999424.96; 821434.58, 1999424.93; 821436.54, 1999424.77; 821437.64, 1999424.62; 821476.83, 1999418.65; 821477.68, 1999418.51; 821479.60, 1999418.09; 821481.49, 1999417.55; 821483.34, 1999416.89; 821485.14, 1999416.11; 821486.89, 1999415.21; 821488.57, 1999414.20; 821488.70, 1999414.12; 821525.83, 1999389.92; 821527.32, 1999388.88; 821528.86, 1999387.66; 821530.31, 1999386.34; 821531.68, 1999384.93; 821532.95, 1999383.43; 821534.12, 1999381.85; 821535.19, 1999380.20; 821536.14, 1999378.48; 821536.98,

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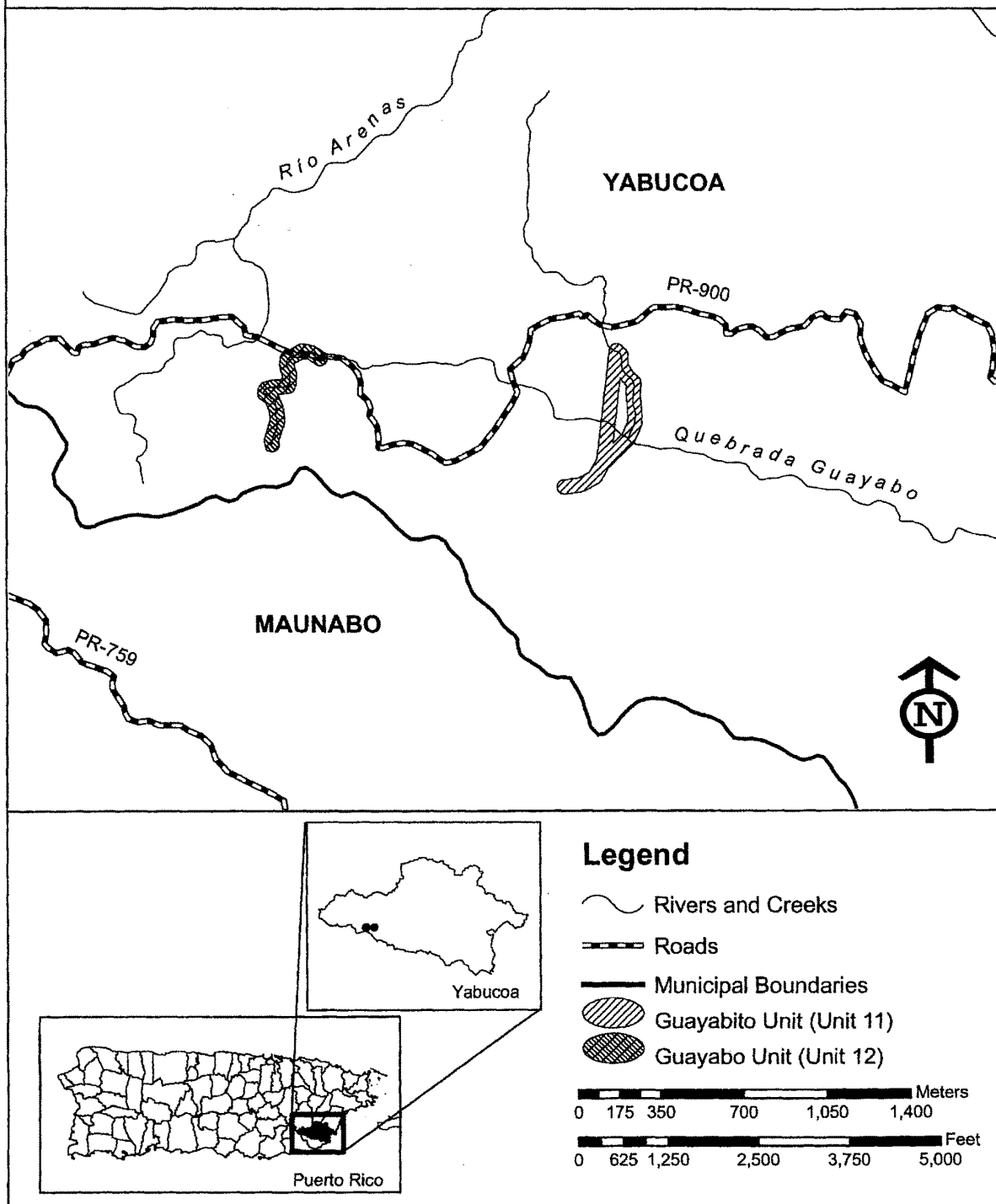
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(iii) **Note:** Map of Units 11 and 12 (Map 10) follows:

BILLING CODE 4310-55-P

MAP 10. Proposed Critical Habitat for the Guajón: Guayabito and Guayabo Units: Guayabota Ward, Yabucoa, Puerto Rico



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Dated: September 25, 2006.

David M. Verhey,

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BILLING CODE 4310-55-C