



February 20, 2014

Public Comments Processing
Attn: FWS –R8-ES-2012-0100 or FWS-R8-ES-2012-0074
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, MS 2042-PDM
Arlington, VA 22203

RE: Economic Analysis of Critical Habitat Designation for Three Sierra Nevada California Amphibians

On behalf of the Rural County Representatives of California (RCRC), I appreciate the opportunity to comment on the Economic Analysis of Critical Habitat Designation for Three Sierra Nevada California Amphibians (Economic Analysis).

RCRC is an association of thirty-four rural California counties and the RCRC Board of Directors is comprised of elected supervisors from those member counties. RCRC has been representing the interests of California rural counties for close to forty years. RCRC member counties cover nearly half of California's land mass. While California as a whole is approximately 50% publicly owned land, many of our member counties have a substantially higher percentage of publicly owned land, with one county having less than 2% privately owned land within its boundaries.

Background

The U.S. Fish and Wildlife Service (USFWS) proposes to designate as critical habitat approximately 1,105,400 acres for the Sierra Nevada yellow-legged frog in Butte, Plumas, Lassen, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Mariposa, Mono, Madera, Tuolumne, Fresno and Inyo Counties. For the northern distinct population segment (DPS) of the mountain yellow-legged frog approximately 221,498 acres in Fresno and Tulare Counties is proposed as critical habitat. Additionally, 750,926 acres of critical habitat in Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties is proposed for the Yosemite toad. Sixteen of the 17 counties listed for critical habitat designation under this proposed listing are RCRC member counties.

On June 24, 2013, RCRC submitted joint comments to the USFWS opposing the proposed listing of the three amphibian species, as well as the designation of proposed

critical habitat, citing the insufficient science that was used to support the listing. Along with the California Farm Bureau Federation and the California Cattlemen's Association, among others, RCRC urged the USFWS to further review and expand its literature review to the studies specifically cited in the joint comments in order to modernize the record with comprehensive, relevant information.

The joint comments expressed serious concern relating to the negative impact the proposed listing and habitat designation would have on the economy of the 17 affected rural counties all of which, for example, rely heavily on agriculture and/or tourism. Some of the statistics included in the June 24, 2013 comment letter have become outdated. Following please find updated economic statistics for the 17 impacted counties:

State Employment Development Department for December 2013 (not seasonally adjusted) reveals that unemployment statewide is 7.9%, but that many of the rural counties with proposed critical habitat suffer from higher unemployment. The current rate of unemployment for the 17 counties is: Alpine – 8.4%; Amador – 9.0%; Butte – 9.1%; Calaveras – 9.4%; El Dorado – 7.2%; Fresno – 12.5 %; Inyo – 7.1%; Lassen – 10.1%; Madera – 10.7%; Mariposa – 8.9%; Mono – 7.2%; Nevada – 6.7%; Placer – 6.5%; Plumas – 11.8%; Sierra – 10.8%; Tulare – 13.4% and Tuolumne – 8.5%.

Methodology of Economic Analysis of Critical Habitat Designation

RCRC submitted comments to the USFWS and National Marine Fisheries Service (NMFS) on the joint draft proposed rule to revise the regulations for impact analyses of critical habitat under the Endangered Species Act (ESA) of 1973, as amended, on November 21, 2012. RCRC urged the USFWS and the NMFS to reconsider the use of the incremental impacts analysis method and to instead adopt the coextensive or full impact approach as it would fairly characterize the real economic impacts resulting from critical habitat designations.

RCRC was therefore very disappointed when on August 28, 2013, the final joint rule was issued adopting an “incremental” approach to preparing an economic impact analysis required for a critical habitat designation under the ESA. In other words, the focus of economic analyses would be solely on the impacts over and above the existing regulatory and socio-economic burden (i.e. baseline) imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat.

While the courts have differed on how to assess economic impacts, RCRC strongly believes that the incremental approach adopted in the final regulations is contrary to the intent of Congress which excluded economic consideration from the listing process but did require economic considerations during designation of critical habitat. The incremental approach, for example, withholds from the Secretary information about the true economic impacts of designating certain areas as critical habitat that may be caused by the cumulative and synergistic effects of multiple laws

restricting the use of land and water resources within the proposed critical habitat area. Consideration of these potential aggregative economic impacts as part of the critical habitat analysis is essential because the area proposed to be designated as critical habitat for the three Sierra Nevada California amphibian species encompasses multiple federal, state, and local jurisdictional boundaries, includes private as well as public land, and covers both land and water uses.

Draft Economic Analysis of Critical Habitat Designation for Three Sierra Nevada California Amphibians

The Economic Analysis, released in January 2014, primarily consists of analyzing the cost of the time other federal agencies must take to consult with the wildlife agencies before authorizing activities within critical habitat. The Economic Analysis, following the guidance of the previously referenced regulations, ignores the underlying costs of listing a species under the ESA.

As noted in the Economic Analysis, the majority of the proposed critical habitat is located on publicly managed land within National Forests and National Parks. Economic activities identified as potential threats to the amphibians and their habitat are: Fish Persistence and Stocking; Dams and Water Diversions (including hydroelectric projects), Grazing, Fuels Reduction/Timber Harvest; and, Recreation.

Each of the activities identified as potential threats to the amphibians and their habitat have the potential to negatively impact the economy of the 17 rural counties. For example, approximately 60% of the areas proposed as critical habitat are located in the National Forests located in these counties. The campgrounds, recreational trails, and recreational areas in the National Forests and National Parks in these 17 counties attract tourists from throughout the world. The importance of recreation/tourism to the economy in these rural areas cannot be overstated. Likewise, agriculture is a fundamental part of the culture and economy of rural California.

RCRC would also like to specifically comment on Fuels Reduction and Timber Harvest, two other activities identified as potential threats to the three species. RCRC is concerned that the actual on-the-ground effect of critical habitat designation will be to impose limitations on fuel reduction programs. More, not less, implementation of fuel reduction programs are needed to better protect our rural communities and the environment from the catastrophic effects of wildfire. For example, this past summer California suffered its 3rd largest fire in its history – the Rim Fire in Tuolumne County. The Rim Fire burned over 257,000 acres primarily in the Stanislaus National Forest and cost over \$127 million to get under control. The impacts of this and other wildfires include impacts on air and water quality, loss of habitat and wildlife, forced evacuations and other devastating environmental and societal losses.

While the majority (95 percent) of the proposed critical habitat is located on federal lands, the proposed critical habitat also includes parcels under county, State and private ownership as follows: State – 267 acres; Local – 325 acres; and, Private –

84,480 acres. Designation of private lands as critical habitat could limit the activities that may take place on those lands and as a result reduce the market value of the land. At a minimum, RCRC urges the exclusion of all private lands from the critical habitat designation as timber harvest on private lands are regulated by the State in accordance with the CA Forest Practice Rules and other applicable laws and regulations.

So-called “baseline” conservation efforts identified in the Economic Analysis as most likely to be taken under the Endangered Species Act (ESA) include: non-native fish eradication, installation of fish barriers, modifications of fish stocking activities, reductions in the intensity of grazing activities; minimizing disturbance of streamside and riparian vegetation; minimizing soil erosion and compaction; and, minimizing impacts on local hydrology.

Other protections afforded the three species include the Sierra Nevada Forest Plan Amendments (SNFPA) which establish standards and guidelines for activities to protect and restore aquatic, riparian, and meadow ecosystems in the 11 National Forests located in the Sierra Nevada range. The Economic Analysis states that the SNFPA provides significant conservation benefits to the species from grazing, timber harvests, fire management and recreation activities that occur on National Forest lands.

Additional protections cited are the Wilderness Act of 1964, anticipated new National Forest System Land Resource Management Plans, the federal Power Act of 1920, the Clean Water Act, the Sequoia and Kings Canyon National Park Restoration of native species in High elevation Aquatic Ecosystems Plan, the Yosemite National Park High Elevation Aquatic Ecosystem Recovery and Stewardship Plan, as well as State protections such as the California Endangered Species Act, the CA Department of Fish and Wildlife High Mountain Lakes Project, and the CA Forest Practice Rules.

The litany of current protections afforded the subject species detailed in the Economic Analysis once again raises the question as to whether the listing of the species and the designation of critical habitat is necessary. RCRC again urges the USFWS to seriously consider the protections already in place.

Impacts to Small Entities and the Energy Industry

The Economic Analysis includes an analysis of the impacts of the proposed designation on small entities, and states that under a strict interpretation of the Regulatory Flexibility Act (RFA) that only Federal agencies are directly regulated by the designation of critical habitat. At the same time the Economic Analysis states that the

USFWS acknowledges that small parties may participate as third parties in section 7 consultations associated with hydroelectric power operations and timber harvest activities and thus are “indirectly” affected. However, again as a result of the methodology utilized, the actual costs to small entities and hydroelectric facilities are not estimated as the Economic Analysis is limited to the “administrative costs” related to consultation.

Conclusion

Rural counties are understandably concerned that the federal government, with its role in water management, flood control, regulation of resource-extraction and other industries, management of federal lands, and funding, authorization, or conduct of myriad other activities may propose actions that will affect activities on lands designated as critical habitat. In fact, the Economic Analysis specifically states that "...a key uncertainty is the question of whether conservation efforts undertaken to avoid jeopardy of the species will be identical to those undertaken to avoid adverse modification of critical habitat."

Section 4(b) (2) of the ESA (emphasis added) reads:

(2) The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a) (3) on the basis of the best scientific data available and after **taking into consideration the economic impact**, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits from such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned."

The USFWS and NMFS utilization of the current federal methodology for economic analysis of critical habitat designation denies the Secretary the data needed to determine the real economic impact of critical habitat designation on the citizens and the economy of the 17 affected counties. Additionally, the conclusions reached in the Economic Analysis relating to the estimated economic impacts from 2014 to 2030, limited as they are in scope, do not provide the Secretary with the information needed to determine if the benefits of exclusion from critical habitat outweigh the benefits of specifying an area as part of the critical habitat. Once again, this appears to be contrary to the intent of Congress and the law as written.

In conclusion, RCRC appreciates the opportunity to comment on the Economic Analysis. Please contact Kathy Mannion at (916) 447-4806 or kmannion@rcrcnet.org with any questions or comments.

Sincerely,

A handwritten signature in black ink that reads "Kathy Mannion". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Kathy Mannion
Legislative Advocate

cc: RCRC Member County Congressional Delegation