

DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE  
10711 BURNET ROAD, SUITE 200  
AUSTIN, TEXAS 78758

**FINDING OF NO SIGNIFICANT IMPACT**

Safe Harbor Agreement for the  
Chiricahua Leopard Frog  
In Arizona

We prepared an Environmental Assessment (EA- attached) for our approval of a Safe Harbor Agreement (Agreement) for the Chiricahua leopard frog in Arizona, and our issuance of a section 10(a)(1)(A) enhancement of survival permit, pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended (16 USC §1531-1544)(Act), to the Arizona Game and Fish Department (Department).

Proposed Action

The proposed action is the approval of the Agreement and the issuance of a section 10(a)(1)(A) enhancement of survival permit for the Chiricahua leopard frog. This alternative is intended to contribute to the conservation and recovery of the Chiricahua leopard frog. However, some future incidental take of Chiricahua leopard frogs is anticipated to occur through implementation of this Agreement and providing assurances that landowners may return their property to the baseline condition.

Under this Agreement, the Department would be able to provide incidental take coverage to non-Federal landowners who voluntarily agree to enhance or create new Chiricahua leopard frog habitat, protect existing habitat, and/or allow a Chiricahua leopard frog population to be re-established on their lands. In addition, neighboring landowners can seek coverage under the Agreement against new regulatory restrictions should frogs move onto their property as a result of recovery activities. However, these regulatory assurances only cover Chiricahua leopard frogs and habitat that are not part of an enrolled property's existing baseline condition. Those Chiricahua leopard frog population sites that are occupied at the time of enrollment under the Agreement would be protected under the Act to the extent described in the 4(d) rule promulgated under the ESA for the species (67 FR 40790).

This Agreement provides two levels of participation from which a non-Federal landowner can choose: that of Participating Landowner or Participating Neighbor. Participation and the level of participation are voluntary. Regulations require that baseline surveys be performed, an agreement be signed by the landowner, reasonable notification be given of any activity that may result in take of the covered species, and access be granted to minimize any take of the covered species. In addition, this

Agreement sets minimum conservation measures (Section 2.5 of the Agreement) for all participants to reduce ongoing affects. These include:

- Managing existing riparian communities along streams and rivers occupied by Chiricahua leopard frogs in a manner to attain and maintain Proper Functioning Condition (Prichard et al. 1998).
- Measures to reduce mortality of frogs during routine stock-tank maintenance, such as development of double tank systems or providing a refugium during maintenance, and limiting maintenance activities during the frog's active season. Exceptions to stock-tank-maintenance requirements are also provided for emergency situations.
- Measures to reduce the loss of frog egg masses from cattle use during the breeding season; the use of ranch management plans, such as those prepared with the assistance of Natural Resource Conservation Service, to manage cattle numbers and seasonal use; and any other measures to which the participant agrees to reduce livestock impacts.
- Measures that restrict participants from introducing non-native predators and competitors to covered sites, reporting the presence of such non-native species, allowing access to agency personnel to control or eradicate such non-native species, and requesting the landowner to assist in implementing these control measures, when appropriate and possible.
- Working with the Department and our office to determine means by which impacts from land-treatment activities, such as prescribed fire, pesticide treatments, and brush control, could be minimized.

The duration of most individual landowner enrollments in the Agreement will be a minimum of 10 years, but could be for the duration of the permit (50 years). The Agreement allows landowners to opt out of their conservation commitments early; however, their assurances from the Agreement also end at that time.

In addition to those actions common to all participants, the Participating Landowners will implement one or more active conservation measures as part of their enrollment (Section 2.6 of the Agreement), including, but not limited to:

- Translocating leopard frogs into a covered aquatic site;
- Constructing a double tank system or a small refugium site at single tank systems;
- Fencing a portion of a tank or stream to prevent destruction or excessive deterioration or trampling of leopard frog habitat at an aquatic site;
- Deepening the tank or pool to increase the amount of water in a tank or pool;

- Drilling a new well and/or connecting sites by pipeline to improve persistence at population sites;
- Removing non-native aquatic predators and competitors from otherwise suitable sites;
- Maintaining existing habitat conditions;
- Enhancing travel corridors between population sites within a metapopulation;
- Enhancing existing stream and cienega habitats; and/or
- Enhancing vegetation to provide additional cover and reduce siltation.

### Alternatives Considered

#### No Action Alternative

In the No Action Alternative, we would not approve the programmatic Safe Harbor Agreement for Chiricahua Leopard Frog in Arizona or issue the associated section 10(a)(1)(A) Enhancement of Survival permit. Therefore, a coordinated effort to recover Chiricahua leopard frogs on non-Federal properties using a single programmatic Enhancement of Survival permit and Safe Harbor Agreement would not occur. Individual landowners or regional organizations could still develop individual Safe Harbor Agreements or Habitat Conservation Plans. Livestock pond use and maintenance activities would continue as they are currently under the section 4(d) rule promulgated in the final rule listing the Chiricahua leopard frog as threatened, which exempted livestock use and routine maintenance of livestock ponds from the section 9 prohibitions of the Act (67 FR 40790). In addition, construction of new stock tanks, wells, and pipelines would occur as part of the continued livestock and agricultural operations within the historical range of the Chiricahua leopard frog. However, there would be no requirement to minimize impacts of these activities on Chiricahua leopard frog or other listed species. Furthermore, there would be no need to notify us or the Department of the activities that may impact the frog. While we recognize the benefits of livestock waters to this species, even with normal livestock use and maintenance of these facilities, the additional conservation benefits from the conservation requirements of the proposed action would not be realized under this Alternative. Recovery efforts for this species would primarily occur on Federal lands, with minor participation of non-Federal land owners. The no action alternative provides the baseline for comparison of environmental effects of the preferred alternative.

#### Public Comment

The Agreement was made available for public review from August 2, 2006 to September 1, 2006. Notices were mailed to 212 individuals, agencies, organizations, and libraries that were likely to be interested in and potentially affected by the proposed action. A

news release was mailed to news outlets in southern Arizona. The news release and the draft EA and Agreement were also posted on our website (<http://www.fws.gov/arizonaes/>) where we requested comments.

We received three letters commenting on the draft Environmental Assessment. We addressed the comments in these letters in the final EA. The comments did not identify any significant new environmental impacts not addressed in the draft EA; however, the letters provided information that improved the final EA and details of implementing the proposed action.

This FONSI with its attached EA will be available on our website, and all who received or commented on the draft EA will receive notice of this decision and where it can be accessed.

#### Determination

Based upon information contained in the final EA and supporting data in our files, we have determined that this action is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969. Specifically, although effects to listed, proposed, and candidate species; vegetation; wildlife; cultural resources; wetlands; and water resources are identified in the EA, effects are minor and may be beneficial. This action is not an action that normally requires preparation of an Environmental Impact Statement (EIS) and is not similar to such actions. Accordingly, preparation of an EIS on the proposed action is not warranted.

The preferred alternative provides for a coordinated approach to the recovery of the Chiricahua leopard frog on non-Federal properties, providing a menu of conservation measures for Participating Landowners to enhance or create new habitat, protect existing habitat, and/or allow a population to be re-established on their lands. In return, Participating Landowners receive assurances that their positive actions will not result in future regulatory restrictions beyond current conditions. It also provides an avenue for Neighboring Landowners to receive assurances should frogs move onto their property as a result of recovery actions on a Participating Landowner's property.

  
\_\_\_\_\_  
Acting Deputy Regional Director

9-29-04  
Date