

Designation of Critical Habitat For the California red-legged frog Background, Questions and Answers

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Background:

The California red-legged frog (*Rana draytonii*) is the largest native frog in the western United States, ranging in size from 1.5 to 5 inches long, but is significantly smaller than the introduced bullfrog, one of its biggest predators. The bodies of adult females are approximately one inch longer than those of adult males.

The belly and hind legs of adult frogs are often red or salmon pink; the back is characterized by small black flecks and larger dark blotches on a background of brown, gray, olive or reddish-brown.

California red-legged frogs have been found from sea level to about 5,000 feet in California and Baja California, Mexico, and may be found in a variety of habitats. The frogs breed in aquatic habitats such as streams, ponds, marshes and stock ponds. During wet weather, frogs may move through upland habitats. Frogs spend considerable time resting and feeding in riparian habitat. They eat mostly invertebrates, and they feed at night.

California red-legged frogs are relatively prolific breeders, usually laying egg masses during or shortly following heavy rainfall in late winter or early spring. The species breeds in aquatic habitats such as streams, ponds, marshes and stock ponds. Females can lay between 2,000 and 5,000 eggs in a single mass. The eggs are attached to bulrushes or cattails.

It takes six to 14 days for the eggs to hatch and approximately three and a half to seven months for the tadpoles to develop into frogs. The highest rates of mortality for this species occur during the tadpole stage: less than one percent of eggs hatched reach adulthood.

The young frogs hunt day and night. This constant activity makes them visible, and, consequently, more vulnerable to predators. Pacific tree frogs and California mice make up the majority of this species' diet, with insects composing the rest.

Historically, the California red-legged frog was found in 46 counties. The range was thought to extend coastally from Sonoma County (but recently has been confirmed further north in Mendocino County) and inland from the vicinity of Redding, Shasta County, south to northwestern Baja California, Mexico. The frog has sustained a 70

percent reduction in its geographic range in California as a result of habitat loss and alteration, overexploitation, and introduction of exotic predators.

Today, only 28 counties have known populations. The California red-legged frog is found primarily in coastal drainages of central California. Monterey, San Luis Obispo and Santa Barbara counties have the greatest amount of currently occupied habitat. Only four areas within the entire historic range of this species may currently harbor more than 350 adults.

Q. What is the status of the California red-legged frog?

A. The California red-legged frog was listed as a threatened species under Federal Endangered Species Act (ESA) in 1996.

Q. What is critical habitat?

A. Critical habitat is a term in the ESA. It identifies geographic areas that contain features essential for the conservation of a threatened or endangered species and may require special management considerations or protection.

Q. Does critical habitat create preserves or provide species with more protection?

A. No. A critical habitat designation does not affect land ownership or establish a refuge, wilderness, reserve, preserve or other conservation area. It does not allow government or public access to private lands and will not result in closure of the area to all access or use. Moreover, listed species, including the California red-legged frog, and their habitats are protected by the ESA regardless of whether they are in an area designated as critical habitat or not.

Q. What is the history of critical habitat for this species?

A. The Service designated 4,140,440 acres as critical habitat for the California red-legged frog on March 13, 2001. A lawsuit challenging the designation was filed in the Northern District Court of California on June 8, 2001. Plaintiffs included the Home Builders Association of Northern California, California Chamber of Commerce, California Building Industry Association, California Alliance for Jobs, and the Building Industry Legal Defense.

All but two of the critical habitat units were vacated by the Northern District Court of California on Nov. 6, 2002, citing deficiencies in the critical habitat designation and the ESA-required economic analysis. The court directed the Service to conduct a new economic analysis and publish a new critical habitat proposal by March 2004 and a final revised rule by November 2005. Because of the tight deadline, the Service's 2004 critical-habitat proposal was very similar to the 2001 designation, and the Service said at that time that its intention was to refine it in 2005, using improved mapping capabilities and updated information.

In 2005 the Service re-proposed 737,912 acres as critical habitat. On April 13, 2006 the Service designated 450,288 acres as critical habitat, eliminating 250,000 acres on the basis of the required economic analysis. The analysis, prepared by the Oakland, CA, office of CRA International, had concluded that the cost of designating critical habitat would be \$497 million over 20 years, mostly in lost development opportunities. It eliminated areas (by census units) that had a projected cost of \$396 million.

Q. Why is the Service re-designating critical habitat now?

A. On July 20, 2007, Service Director Dale Hall announced plans to review and take further action, as appropriate, for eight decisions made under ESA, after questions were raised about the integrity of the scientific information used and whether the decisions made were consistent with the appropriate legal standards.

The decisions in question were overseen by former Deputy Assistant Secretary for Fish and Wildlife and Parks Julie MacDonald, who resigned on May 1, 2007. Deputy Secretary of the Interior Lynn Scarlett asked Hall in May 2007 to review decisions overseen by MacDonald to determine if any required revision based on her involvement. At the time Hall reaffirmed his commitment to the scientific integrity of the Service. "Should our reviews indicate that additional corrective actions are necessary, we will take appropriate action as quickly as we can," Hall said in July 2007, a commitment that is reflected by this new proposal.

At Hall's direction, Service biologists in offices throughout the nation reviewed hundreds of actions. They identified eight decisions that required further review, including the California red-legged frog critical habitat. Hall emphasized that the integrity of the ESA depended on rigorous and impartial analysis of scientific evidence, as well as consistent application of the legal standards of the Act and regulations. Early in 2006 Hall established clear procedures and areas of responsibility for ESA decisions.

In December 2007, after the Hall-ordered review of the frog and other rules were already well advanced, a complaint was filed in federal court challenging the 2006 critical habitat rule. A consent decree (April 2, 2008) set a date of Aug. 29, 2008 for submittal of a proposed rule to the Federal Register. The proposed rule was submitted to the Register on Aug. 28, 2008. This action completes the process.

Q. Was the Service forced to take this action by a lawsuit?

A. No. Director Hall ordered a new review on July 20, 2007, and new proposal if the biologists believed that there should be a new proposal after their review. A suit seeking a new rule was filed on Dec. 19, 2007, when Service biologists were already five months into the review ordered by Hall. This rule reflects the solid scientific analysis carried out independently by the biologists.

Q. How does this rule differ from the 2006 rule?

A. Service biologists developed this rule entirely separate from the 2006 rule. The unrestricted analysis resulted in substantial increases in the amount and distribution of proposed critical habitat, with better representation of areas essential to the species or which contain features essential to its conservation. The current process began by focusing on the 34 core areas defined in the 2002 Recovery Plan for the California Red-Legged Frog. It selected areas essential for conservation of the species, or that have unique habitat, represented its geographic range, and were most appropriate for its conservation. It sought to avoid areas where potential conflict with development might occur if other suitable areas are available, which resulted in several new areas being proposed.

The Service also broadened its focus in developing this proposal by adding appropriate areas adjacent to areas that had confirmed occurrences of the species at the time the species was listed in 1996. The 2006 rule designated only areas that had records showing large numbers of frogs at the time of listing.

The Service also revised the Primary Constituent Elements (PCEs) which are used, as required by our ESA regulations, to identify the physical and biological features that are essential to conservation of a species. The most significant change in the PCEs for the 2010 rule was to expand both the upland habitat range, limited to 200 feet in the 2006 rule, and the breeding habitat, set at 0.7 miles in 2006, to one mile generally, but with distances determined by the habitat itself.

The northern coastal range of protected habitat for the frog was extended into Mendocino County. Several occurrences in the Sierra Nevada also were added in 2010.

The Service also revised its approach to habitat on military reservations. In 2006 it excluded proposed critical habitat on two bases (Vandenberg AFB and Camp San Luis Obispo) because they were developing Integrated Natural Resource Management Plans (INRMPs) to protect species. Although those INRMPs still have not been completed by the military bases, the 2010 rule excludes the two military bases on the basis of national security needs.

Q. How can this rule be called adequate when it proposes only 40% of the area designated as critical habitat by the 2001 rule?

A. This rule makes good sense for the survival and recovery of the species.

The 2001 designation used large-scale watershed boundaries, due to the more limited mapping capabilities that we had available nearly a decade ago. Thus, it designated as critical habitat many areas not known to be occupied by the species or which contained low quality habitat which may or may not be viable in the long term.

The 2006 rule focused only on areas which have large numbers of frogs.

The 2010 rule is based on known occurrences of the species, areas that have high quality habitat, or are geographically or ecologically unique for the frog. The actual boundaries of

the 2010 units focused on local watershed boundaries or known habitat. However, developed areas, fragmented areas of low quality habitat, and heavily farmed areas were avoided in this designation.

Q. What are the threats to the California red-legged frog?

A. The frog and its habitat are threatened by a multitude of factors including but not limited to:

- Degradation and loss of habitat through urbanization, mining, improper management of grazing, recreation, invasion of nonnative plants, impoundments, water diversions and degraded water quality.
- Introduced predators, such as bullfrogs.
- Previous overexploitation.

Q. What protection does the California red-legged frog receive as a listed species?

A. The ESA makes "take" illegal – forbidding the killing, harming, harassing, possessing or removing of protected animals from the wild, including their habitat. Those protections apply to a listed species wherever it occurs, without consideration of whether it is an area of designated critical habitat or not, and they apply to all parties, public or private.

Designation of critical habitat adds a requirement that Federal agencies must consult with the Service to ensure that projects they authorize, fund or carry out are not likely to jeopardize the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of designated critical habitat.

Q. What is being done to save the California red-legged frog?

A. Recovery planning began soon after the 1996 listing. Species experts, state and Federal agency representatives, and stakeholders representing a variety of interests developed a comprehensive plan to recover the species. The Recovery Plan is on the Web at http://ecos.fws.gov/docs/recovery_plans/2002/020528.pdf . A recovery plan is an advisory document, so cooperation from private property owners and other stakeholders is voluntary. But that cooperation is crucial to achieving success.

In working to carry out the recovery plan, the Service is working with a variety of public and private partners to:

- Protect existing populations by reducing threats.
- Restore and create habitat that will be protected and managed in perpetuity.
- Survey and monitor populations and conduct research on the species.
- And re-establish populations of the species within the historic range.

Q. What happens if my private property is within designated critical habitat for the California red-legged frog?

A. The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Activities on private lands that do not require Federal permits or funding are not affected by a critical habitat designation. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land. However, the ESA prohibits any individual from engaging in unauthorized activities that will actually harm listed wildlife, including the California red-legged frog. That prohibition is in effect for any federally listed wildlife, with or without regards to the designation of critical habitat.

Q. How does the special rule work?

A. Section 4(d) of the Endangered Species Act provides authority for the Service to adopt special rules for threatened species that would relax specific prohibitions against killing or injuring the species. To promote conservation efforts of the California red-legged frog, the Service in 2006 established a special rule that exempts take of the frog caused by existing routine ranching activities on private or Tribal lands. The special rule is continued in the 2010 rule. The 4(d) rule encourages landowners and ranchers to continue their livestock-related practices that are not only important for livestock operations, but also provide habitat for the California red-legged frog.

Q. What constitute routine ranching activities, and what would not?

A. Under the rule, routine ranching activities includes:

- Livestock grazing according to normally acceptable levels.
- Control of ground-burrowing rodents.
- Limited discing and grading to destroy rodent burrows, generally near ranch buildings and livestock concentrations.
- Routine maintenance of stock ponds and berms to maintain livestock water supplies.
- Control and management of noxious weeds.

Activities that are not exempt would include:

- The use of toxic or suffocating gases to control rodents.
- Large-scale discing or grading of rangeland (generally, more than 10 acres).
- The introduction of species into the stock pond that may prey on California red-legged frog, such as bullfrogs.
- Introducing chemicals into stock ponds during frog breeding seasons.

Q. What is the purpose of the Economic Analysis?

A. Sec. 4(b)(2) of the ESA requires that we designate critical habitat based upon the best scientific and commercial (emphasis added) data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. The intent of the EA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the species.

The EA identifies potential incremental costs as a result of the critical habitat that are over and above the baseline costs attributed to the species being listed under the act. The EA considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures.

Q. Where can I get more information about the California red-legged frog and this critical habitat designation?

A. For general information, information on the special rule, and information about the proposed designation contact: Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W. 2605, Sacramento, CA 95825 (telephone 916/414-6600; facsimile 916/414-6712).

Q. Where can I find the entire rule?

A. The rule, with the economic analysis and maps, is available at **<http://www.regulations.gov>** or at **[http:// www.fws.gov/sacramento](http://www.fws.gov/sacramento)** . The rule and all other official documents related to the species will be found on the Service’s species website at **<http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?scode=D02D>**