



United States Department of the Interior

U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513



In Reply Refer to:
AESO/SE

March 16, 2004

E-Mail Transmission
Memorandum

To: Regional Director, Region 2, Albuquerque, New Mexico
(ARD-ES) (Attn: Luella Roberts)

From: Field Supervisor, Arizona Ecological Services Field Office, Phoenix, Arizona

Subject: Findings and Recommendation on Issuance of an Incidental Take Permit for
Threatened Chiricahua Leopard Frog (*Rana chiricahuensis*) in Cochise County,
Arizona and Hidalgo County, New Mexico (TE-073684-0).

I. DESCRIPTION OF PROPOSAL

Malpai Borderland Group (Malpai) has developed a Safe Harbor Agreement (Agreement) and has applied to the U.S. Fish and Wildlife Service (FWS) for an incidental take permit pursuant to Section 10 (a)(1)(A) of the Endangered Species Act, as amended (16 USC §1531-1544)(Act). The requested permit, which is for a period of 50 years, would authorize incidental take of Chiricahua leopard frog (*Rana chiricahuensis*) for regular operations and maintenance of stock tanks, other ranch related activities, implementation of conservation activities, and to take the frog population back to baseline conditions. The area covered by the Agreement and associated permit would be non-Federal lands within approximately 1 million-acres of the Malpai planning area and any adjacent ranches that may seek assurances as participating neighbors under the Agreement.

The Malpai will hold the Agreement's associated section 10(a)(1)(A) Permit. Individual Malpai landowners who wish to become participants in the Agreement may do so by obtaining a "Certificate of Inclusion" from Malpai. The Certificate would convey Malpai's permit authorities to Participating Landowners, Neighbors, and State Agencies for activities on their enrolled lands.

The Agreement identifies minimization measures to avoid excessive mortality or extirpation of leopard frogs during regular operations and maintenance of stock tanks and other ranch related activities. Measures are more fully described within the Agreement, but include: constructing a refugia site; implementing tank maintenance regimes, schedules, or techniques that maintain a portion of the tank as escape cover; allowing all equipment used for tank maintenance to dry thoroughly or sterilizing equipment before moving to another site to prevent disease

transmission; allowing appropriate agencies to collect and hold leopard frogs during maintenance activities; conducting maintenance during the most active period of leopard frogs (April 1 to October 31); translocating frogs into an alternative tank only if it meets short-term habitat goals; managing livestock grazing in and around stock tanks supporting leopard frogs to avoid destruction or excessive deterioration of leopard frog habitat; preventing or controlling the introduction of non-native aquatic predators into leopard frog habitat; and for land treatments that alter vegetation or change run off characteristics including measures such as buffers around drainages, erosion control structures, and buffers around the enrolled sites.

In addition, Participating Landowners may choose to implement conservation enhancement measures. Each Participating Landowner will select one or more enhancements that will provide a conservation benefit for existing or new populations of leopard frogs on their property. These include: the establishment of new leopard frog populations, construction of a double tank system, construction of small refugia sites, fencing portions of habitat, deepening the tank, drilling new wells, constructing distribution pipelines, removing aquatic predators from otherwise suitable sites, maintenance of existing habitats, enhancement of travel corridors, enhancement of stream and cienega habitats, and enhancement of vegetation in or around aquatic sites.

Analysis of Effects

II. PUBLIC COMMENT

We published a Notice of Availability of the Agreement and Receipt of the Application for an Incidental Take Permit for Chiricahua leopard frog on approximately 1 million acres in Cochise County, Arizona and Hidalgo County, New Mexico in the Federal Register on October 6, 2003. Publication of the notice initiated a 30-day comment period, which closed on November 6, 2003. Letters with a copy of the Federal Register notice were mailed to approximately 99 interested parties. The Agreement was available on the USFWS - Arizona Ecological Services Field Office website and by request at the Phoenix or Tucson Offices. The Center for Biological Diversity requested a hard copy of the Agreement, but never commented on the Agreement. We received a total of eight responses, including from Arizona Game and Fish Department, Environmental Defense, Indiana University, Tucson Herpetological Society, and the Mexican government. All responses for the Agreement were positive.

III. INCIDENTAL TAKE PERMIT CRITERIA - ANALYSIS AND FINDINGS

1. The taking of the above listed species will be incidental to an otherwise lawful activity and will be in accordance with the terms of the Agreement.

four
Incidental take of Chiricahua leopard frogs may occur under this Agreement primarily as a result of three activities: 1) livestock use of enrolled aquatic sites supporting leopard frog populations, or of other ranch properties; 2) aquatic site maintenance and improvement activities at enrolled aquatic sites; 3) the capture, holding, transport, and release of frogs from population sites during salvage operations and for translocation to new or existing sites; and 4) a decision by a Participating Landowner, Participating Neighbor, or Participating State ✓

Agency, as applicable, to return any enrolled site or sites on their properties to baseline conditions. Any take of Chiricahua leopard frogs will be incidental to these otherwise legal activities.

2. The implementation of the terms of the Agreement will provide a net conservation benefit to the effected listed species by contributing to the recovery of listed species (included in the permit, and the Agreement otherwise complies with the Safe Harbor policy (June 17, 1999). ✓

The Agreement will result in a net conservation benefit to the above listed species, as required by our Final Safe Harbor Policy, 64 Fed. Reg. 3217 (June 17, 1999). The Agreement's purpose is to enhance habitat and metapopulation dynamics for this species. Populated sites will be created through translocation, habitat improvement, and habitat creation. For as long as these populated sites and habitats persist, they will aid in the conservation of Chiricahua leopard frogs through improvement of metapopulation dynamics and habitat conditions. The Agreement also provides for the enhancement of sites with existing populations of leopard frogs to improve the baseline condition. ←

The Chiricahua leopard frog will benefit directly from the enhancement of existing natural and artificial habitats, creation of new habitats, and the establishment of more aquatic sites within each of the two metapopulations identified in the area covered by the Agreement. While no recovery plan has been finalized for this species, these general activities are consistent with interim and long-term conservation actions discussed by the recovery team.

The enhancement of existing habitats could include the fencing of all or portions of aquatic habitats, deepening stock tanks, providing reliable water supplies, or removing nonnative predators from these habitats. These activities should provide more stable, heterogenic habitats that will foster higher productivity and survival of Chiricahua leopard frogs within a metapopulation. The creation of additional aquatic habitat would provide refuge to individuals of a metapopulation during drought or anthropogenic events. The establishment of additional occupied sites within a metapopulation enhances the opportunity for recolonization of sites where local extirpation has occurred, thus reducing the effects of any one catastrophic event.

Net conservation benefit to the Chiricahua leopard frog could range from increasing the number of available habitats to the enhancement of existing occupied sites within a metapopulation. The 10-year minimum conservation period provides for a considerable amount of time for reproduction and dispersal for this species. Even if there is no artificial movement of individuals to new sites, natural dispersal will result in an increased number of sites being occupied by the end of the minimum conservation period. A net conservation benefit is expected even if participating neighbors only implement minimal conservation actions.

3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.

The Act's legislative history establishes the intent of Congress that issuance criteria be based on a finding of "not likely to jeopardize" under section 7(a)(2) [see 50 CFR 402.02]. As a result, we have also reviewed approval of the Applicant's permit application under section 7 of the Act. In the Biological Opinion, which is attached hereto and incorporated by reference, we concluded that issuance of the permit to the Applicant will not likely jeopardize the continued existence of the Chiricahua leopard frog^s. Although Participating Landowners will be enhancing and creating habitat on enrolled properties these enhancements and new populations of frogs will be considered "taken" in the analysis of the species' current status and baseline, unless there are provisions for their long-term persistence (i.e. beyond the 10-year minimum conservation period in the Agreement). Therefore, in evaluating subsequent Federal projects, Habitat Conservation Plan proposals, and any other proposed Safe Harbors, we will not "overestimate" the amount of available habitat for these species under a jeopardy analysis.

4. Implementation of the terms of the Safe Harbor Agreement is consistent with applicable Federal, State, and Tribal laws and regulations.

The Agreement complies with all other applicable Federal, State, and Tribal laws and regulations as outlined in the Safe Harbor Agreement and Categorical Exclusion.

5. Implementation of the terms of the Safe Harbor Agreement will not be in conflict with any ongoing conservation or recovery programs for listed species covered by the permit.

Implementation of the Agreement is consistent with the interim conservation activities that are currently being planned for this species in Southern Arizona and Southwestern New Mexico. The Technical Sub-group of the Chiricahua leopard frog recovery team is currently drafting similar conservation measures. No other listed species in the area will be affected by the Agreement. The Agreement will demonstrate incentives for private landowners to restore and enhance habitats for listed species, and establish populations of listed species on non-Federal property.

6. The applicant has shown capability for, and commitment to, implementing all of the terms of the Agreement.

The conservation program established by the Agreement is intended to be a collaborative process between the FWS, Malpai, landowners, and other public and private cooperators. Accordingly, no single source will support the program's funding requirements. Instead, each cooperator will contribute funds, services, and other program needs according to its resources and role in the program. In addition, funds in the form of contracts, grants, and donations will be sought from program-related sources (i.e., program cooperators) as well as non-program related sources, such as conservation organizations and foundations.

To some extent, the actual level of conservation effort implemented under this Agreement will depend on two factors: 1) the number of Malpai landowners who enroll in the Agreement; and 2) the success of its signatories and other program cooperators in providing or otherwise obtaining funding. For example, the number of leopard frog populations

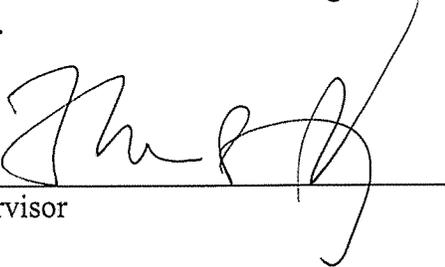
actually established and maintained in the covered area, the number of stock tank improvements actually implemented, and the level of monitoring required, would all depend on these factors. Thus, specific enrollment levels, funding levels, and funding needs over the long-term cannot be exactly predicted and, to some extent, will depend on each other. However, at a minimum, the Malpai and the FWS expect the following. First, landowner participation, based on currently known interest levels, will likely be sufficient to protect existing leopard frog populations within the covered area and to establish a minimum of three to five additional populations through reestablishment and translocation. Second, currently identifiable resources— including those available from the Malpai, the Service (Refuge), USGS-BRD, University of Arizona, Gray Ranch, The Nature Conservancy, Arizona Game and Fish Department, and New Mexico Department of Game and Fish are sufficient to support the program at this level. Beyond that, additional participation and funding would likely be needed. It is reasonable to expect that the Agreement program will gain momentum over time and that additional resources will be developed by program cooperators commensurate with increasing landowner interest, public and private interest generally, and evolving biological and funding needs.

IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS – ANALYSIS AND FINDINGS

We have no evidence that the permit should be denied on the basis of the criteria and conditions set forth in 50 CFR 13.21 (b)-(c). The Applicant has met the criteria for the issuance of the permit and does not have any disqualifying factor that would prevent the permit from being issued under current regulations.

V. RECOMMENDATION ON PERMIT ISSUANCE

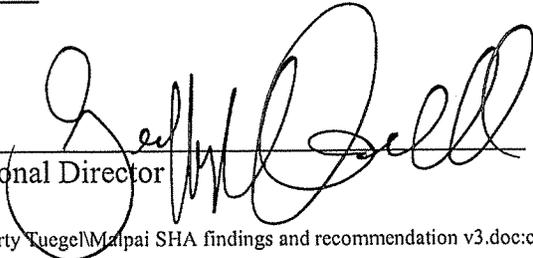
Based on the foregoing findings with respect to the proposed action, We recommend issuance of a permit to authorize incidental taking of Chiricahua leopard frog in accordance with the Agreement.

For 
Field Supervisor

3/16/04
Date

Concur:

ACTING


Regional Director

4/20/04
Date