

A success story regarding frogs and habitat

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On November 3, 2005, the United States Fish & Wildlife Service (Service) published revised designations for critical habitat for the California Red-Legged Frog. These revised designations are dramatic improvements from the first two drafts, in large part because of the successful lobbying efforts of agriculture and supportive businesses. This article explores the history of the designation and the impact of the lobbying efforts.

Initial Designation of Critical Habitat

The California Red-Legged Frog, the largest type of frog on the West Coast, achieved fame in Mark Twain's *The Celebrated Jumping Frog of Calaveras County*. It was plentiful in the 1800s and was a staple in the diets of many. Later, bullfrogs, pesticides and other factors contributed to a decline in its population. Under the *Endangered Species Act* (ESA), the Service designated the California Red-Legged Frog as an endangered species in 1996.

After it places a species on the endangered species list, the Service is required to designate critical habitat for that species. In 2001, more than four million acres in California were designated as "critical habitat" for the frog. A critical habitat is defined by the ESA as, 1) a specific area inhabited by the species which is "essential to the conservation of the species" and which "may require special management considerations or protections," and 2) a specific area outside where the species lives that is "essential for the conservation of the species".

Negative impacts on land designated as "critical habitat"

Once an area is designated as a "critical habitat," actions taken on the property can be severely curtailed by the imposition of another layer of government oversight. More specifically, federal agencies and private parties who need federal agency permits, approval or funding must go through an onerous consultation process to confirm that their actions will not jeopardize the endangered species or its critical habitats (see sidebar).

The lawsuit

California plaintiffs challenged the Service's 2001 designation of the four million acres of critical habitat arguing that the Service did not provide the required economic analysis of the designation's impact. As a result of that challenge, the Service agreed in a 2002 Consent Decree to set aside its 2001 designations, to conduct the required economic analysis, and to issue a revised habitat proposal based on the new assessment of economic and other impacts.

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Negative impact of critical habitat designation

Additional consultation process:

Section 7 of the Endangered Species Act requires that federal agencies consult with the Service if a proposed action may affect a designated critical habitat. These actions include providing permits and funding. This slows down the farmer's projects since the consultation process can take a long time. This can cost more money because the farmer will likely need expert assistance through the consultation process. And if there are going to be adverse consequences, the farmer will be forced to spend additional money to modify the project so as to avoid the consequences, or may not be allowed to do the project.

Additional scrutiny for state and local permits:

As a practical matter, state and local regulatory agencies are more likely to scrutinize the farmer's activities when the farmer needs permits from them, too, to make sure that their activities do not harm the protected species.

Devaluation of farmland: Finally, a farmer's greatest asset is frequently the land and its value is decreased by the designation. If a farmer tries to borrow money from the bank using critical habitat farmland as collateral, the farmer will not be able to borrow as much because the bank views critical habitat farmland as less valuable. Additionally, the farmer will receive less favorable loan terms, thereby further impeding the farmer's ability to continue operations.

The "revised" critical habitat

On April 13, 2004, the Service issued its "revised" critical habitat. It was virtually the same as the original proposal that was invalidated by the court in the 2002 Consent Decree.

The designation included over 100,000 acres in Monterey County and approximately 48,000 acres in San Benito County. Most of the land designated in Monterey County is privately owned, and much of it is used for farming row crops. Virtually all of the land designated in San Benito County is privately owned and being used for farm row crops or for ranching. Incredibly, some of the land included major thoroughfares. It was difficult to imagine how these well-traveled highways could possibly have been considered critical habitat for frogs!

The lobbying efforts

The Service hired David Sunding, a Berkeley economics professor, to perform the required economic analysis. In response to Mr Sunding's request for information regarding the likely impact the designation would have, the agriculture and business communities worked together to provide much persuasive evidence regarding the negative impacts the designation would have in this area.

Local representatives visited with Service representatives and provided personal explanations regarding the negative impacts of the proposed designation. The agriculture community provided response letters through the Grower-Shipper Association, the Monterey County Farm Bureau, and the San Benito County Farm Bureau. The local business community responded with letters from Community Bank, Pacific Valley Bank and the Salinas Valley Chamber of Commerce. These letters detailed the numerous ways in which the designation would harm our local economy.

As the support letters explained, our local economy is dependent on agriculture's success. By designating so much land as critical habitat, the Service added yet another hurdle to the farmers' already difficult

competition. The letters pointed out how important it is that our farmers be able to compete in the global marketplace. They also explained that our employees are having difficulties in locating affordable housing, so to the extent some of the land could someday be used for affordable housing, it was vitally important that it not be saddled with the critical habitat designation.

The dramatically improved designation

The business and agricultural lobbying worked. The Service published its revised designation maps on November 3, 2005. The difference is huge. The acreage in the new publication is approximately 82 percent less

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than what it was. The maps can be accessed through the Service's website at <http://www.fws.gov/sacramento/>. The areas in the revised designation appear to be much more tailored to the areas the frog actually lives in, uses and needs. Common sense prevailed, and the major freeways are now absent from the designations.

As of the date this article is being written, lobbying continues in the form of additional letters of support that express appreciation to the Service for taking such large steps in the right direction with the revised designation. It appears likely that the Service will finalize and adopt these much improved maps with only minor revisions. On the whole, this is excellent news, and it really shows that business and agriculture in our community work very well together to accomplish what needs to be done. ☪