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Public Comments Processing Attn: FWS-R8-ES-2012-0100 & FWS-R8-ES-2012-0074  
Division of Policy and Directives Management US Fish and Wildlife Service  
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Re-Comment on proposed listing of Frog & Toad Docket No. FWS-R8-ES-2012-0100 & 0074

To Whom It May Concern,

On behalf of the California Off-Road Vehicle Association, we appreciate the opportunity to submit comments and information concerning the proposed rules to list as endangered/threatened, and to designate critical habitat for, the Sierra Nevada Yellow-Legged Frog (*Rana Sierrae*), Northern Distinct Population Segment of the Mountain Yellow-Legged Frog (*Rana Muscosa*) and the Yosemite Toad (*Anaxyrus Canorus*), as published in the Federal Register / Vol. 78, No. 80 / Thursday, April 25, 2013.

When a species is proposed for listing, the presumption is that the species will benefit by this listing, and the designation of an extensive area as critical habitat will be advantageous for a multitude of scientifically based reasons. Because the designation of critical habitat in this proposal will remove 2 million acres located throughout California from the majority of benefits public land offers to visitors and residents, it additionally has to be proven without doubt that human activity is a primary cause of problems with the species. In regards to the decline of Mountain Yellow-Legged Frogs we have found that this is not the case. In a study released by the United States Geographical Survey (USGS), Adam R. Backlin of the Western Ecological Research Center<sup>1</sup> clearly linked Chytridiomycosis, an infectious skin disease to "*population declines and mass mortalities of amphibians in many parts of the world*". According to Mr. Backlin, this fungal infection has caused destruction in frog populations throughout the world, including isolated and geographically separate locations.

The same conclusion has been reached in a 2007 study published in the Proceedings of the National Academy of Sciences, written by David Wake, Professor of Integrative Biology at UC Berkeley, and Vance Vredenburg, research associate at the Museum of Vertebrate Zoology at UC Berkeley and Assistant

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<sup>1</sup> [http://microbiology.usgs.gov/wildlife\\_health\\_amphibians.html](http://microbiology.usgs.gov/wildlife_health_amphibians.html)

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Professor of Biology at San Francisco State University. The authors state there are very specific causes attributable to the problems facing worldwide amphibian populations. Again it is confirmed that numerous frog species have been in decline due to the pathogenic fungus that causes the disease chytridiomycosis. This disease is endemic worldwide, including tropical areas with high amphibian diversity, and has resulted in significant amphibian mortality. From these studies we can conclude this fungus is neither specific nor unique to California. Events in California are not responsible for the fungus, and consequently are not responsible for the decline in the Mountain Yellow-Legged Frog and Yosemite Toad populations.

An article published by sciencedaily.com<sup>2</sup>; (as a follow-up to the aforementioned study) included a comment praising current ongoing efforts in California to protect the Mountain Yellow-Legged Frog. Professor Wake is quoted in the article as stating; *"We have these great national parks here that are about as close as you can get to absolute preserves, and there have been really startling drops in amphibian populations there, too"*. Professor Wake continued to observe; *"...for two of these species, the Sierra Nevada Yellow-legged Frog and the Southern Yellow-legged Frog, populations over the last few years declined by 95 to 98 percent, even in highly protected areas such as Yosemite National Park"*. [emph. added].

There had been a previous hypothesis that stocking of non-native trout in mountain streams was responsible for the decline in frog populations, but Professor Wake refuted this hypothesis by saying; *"The first hint of frog decline in this area came in the 1990s, and researchers originally thought that rainbow trout introduced to this area were the culprits – they like to snack on tadpoles and frog eggs. The UC Berkeley team did experiments in which it physically removed trout from some areas, and the result was that frog populations started to recover. But then they disappeared again, and this time there were carcasses," Wake said. The culprit is a nasty pathogenic fungus that causes the disease chytridiomycosis"* [emphasis added].

Professor Wake also spoke of the theory of 'mass extinction events' that may be contributing to the decline in amphibian populations. Mass extinction is posited to have started approximately 10,000 years ago, but is extremely difficult to accurately assess. There is consensus that we have been in a state of flux with new species evolving, and others experience a decline in population for eons, as a natural consequence of the evolving world. The decline of amphibians worldwide fits into this hypothesis.

To counter the effects of this fungal infection, scientists from the USGS, working with staff of the San Diego Zoo have successfully conducted two releases of Mountain Yellow-Legged Frog tadpoles in a controlled setting. Through a captive breeding program in conjunction with the San Diego Zoo Institute for Conservation Research, a total of 500 eggs have been reintroduced in the San Jacinto Mountains. According to Jeff Lemm, research coordinator San Diego Zoo, this program has been "wildly successful".<sup>3</sup>

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2 <http://www.sciencedaily.com/releases/2008/08/080812135654.htm>

3 <http://www.usgs.gov/newsroom/article.asp?ID=2441>

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In 2009, A population of previously unknown Mountain Yellow-Legged Frogs has also been found the San Bernardino National Forest, in the San Jacinto Wilderness. Although the numbers of frogs has not been definitively determined, scientists have indicated that this is a significant population. <sup>4</sup> This discovery has been called a 'windfall' for all and indicates that the species may have a more diverse habitat than previously thought.

On September 8, 2010 , the Daily News of Los Angeles celebrated another step forward by published an article, entitled "Yellow-legged frog back from the brink", describing the successful rescue efforts of dozens of Mountain Yellow-Legged Frogs after the devastating Station Fire<sup>5</sup>. Almost all of the 106 frogs rescued from the burn area survived relocation to the Fresno Chaffee Zoo, and the USGS announced plans to relocate approximately 70 of the frogs back to the native habitat. In describing the problem related to the decline in frog population, Adam Backlin, head of the USGS frog reintroduction and monitoring project, stated his primary theory behind the demise of the frog; "*....that sometime around 1970 the amphibian chytrid fungus started killing them off. The fungus has been around for at least 100 years, and scientists are trying to figure out why it became so deadly....No one really knows for sure what happened*".

The cost of the proposal is unfathomable, as the taxpayer is asked to pay the price for the every listing and designation of critical habitat. According to attorney Karen Budd-Falen, of the Western Legacy Alliance; "*The California red and yellow-legged frogs have cost the taxpayers \$445,924 just in litigation attorneys fees.....Between 2000 and 2009, in just 12 states and the District of Columbia, 14 environmental groups filed 180 federal court complaints to get species listed under the ESA and were paid \$11,743,287 in attorneys fees and costs.*"<sup>6</sup>

Given the evidence, there is little to be gained by listing the Mountain Yellow-Legged Frog and Yosemite Toad, and the designation of critical habitat. Instead, efforts should be directed towards investigations into the fungal disease that is at the basis of their decline. On behalf of the California Off-Road Vehicle Association, we find the proposed designation of critical habitat and the proposed listing of both the Mountain Yellow-Legged Frog and the Yosemite Toad as unnecessary and misleading. Specifically, the designation of 2 million acres of land has not been shown as scientifically necessary.

In addition to the above scientifically oriented comments, there is another issue of great concern to CORVA. The proposal for listing and designating habitat came about from discussions between US Fish and Wildlife and the Center for Biological Diversity. From the location of the land proposed as critical habitat to the amount of land proposed, all these details were determined outside of a public process; therefore CORVA believes this is a violation of NEPA.

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4 <http://www.sciencedaily.com/releases/2009/07/090726093404.htm>

5 [http://www.dailynews.com/news/ci\\_16025371?source=pkg](http://www.dailynews.com/news/ci_16025371?source=pkg)

6 <http://westinstenv.org/wildpeop/category/endangered-specious/page/2/>

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In *Conservation Northwest v. Sherman* (Conservation Northwest II), No. 11–35729, 2013 WL 1760807 (9th Cir. Apr. 25, 2013), the Ninth District Court recently ruled as to the applicability of NEPA when considering consent decrees, or agreements that take place outside the public process. The court found that it is unlawful to “...enter a consent decree that permanently and substantially amends an agency rule that would have otherwise been subject to statutory rulemaking procedures.”

A similar argument can be made in this instance. The US Fish and Wildlife Service, to avoid litigation, predetermined that an arbitrary amount of acreage be set aside as critical habitat for the Mountain Yellow–Legged Frog and Yosemite Toad, and the public can have little hope in their comments of overturning that determination. This violates the essence of NEPA. At question in the current proposal is not the need for habitat, because that has already been predetermined without any public input, it is simply the amount or particular location of habitat. All other opinions or scientific determinations have been rendered moot, because there is no circumstance acceptable in which the agency can determine there is no need for critical habitat designation.

Please remand this proposal and submit to the public all information related to critical habitat regarding the Mountain Yellow–Legged Frog and the Yosemite Toad. To do otherwise would undermine the public’s rights guaranteed in NEPA, and the trust that should exist between federal agencies and the populations they serve.

Sincerely

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