

COUNTY OF EL DORADO

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Public Comments Processing
Attn: FWS-R8-ES-2012-0074 or FWS-R8-ES-2012-0100
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
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Dear Sir or Madam:

The Board of Supervisors of the County of El Dorado appreciates the opportunity to comment on the Draft Economic Analysis of the proposed Critical Habitat Designation for Three Sierra Nevada California Amphibians. Our response follows below:

1. The incremental approach is flawed as it fails to adequately address secondary effects.

The incremental approach used in the analysis identifies two types of impacts: direct and indirect. "Direct incremental impacts of the proposed critical habitat designation are limited to the administrative cost of considering adverse modification in Section 7 consultation (Key Issues and Conclusions of the Incremental Analysis, Pg. 4-2)." Indirect impacts "are those unintended changes in economic behavior that may occur outside of the Act...and caused by the designation of critical habitat (Chapter 2, #79)." Importantly, indirect impacts generally fail to meet the Federal nexus required for analysis, and as the report states "These types of impacts are not always considered incremental (Chapter 2, #79)." As Exhibit 2-2 (Framework for Determining Baseline and Incremental Impacts) shows, those actions that do not have a Federal nexus were not considered in the economic analysis. Instead the indirect impacts were "considered baseline impacts in the analysis (Chapter 2, #79)" which means the critical habitat designation would not impose any more regulations that what is already statutorily or administratively required. In the few instances where indirect impacts were considered it was only incrementally – in other words, when Section 7 consultation may be required.

Experience has shown that indirect, or secondary, impacts have a much larger effect on natural resources management than direct impacts (i.e. incremental). The listing of the Northern Spotted Owl as a "threatened species" in 1990 demonstrates the true economic

cost of regulatory designations: An 80% reduction in the amount of timber harvested in the western United States. In California, every million board foot of timber harvested equates to 6.4 jobs directly with a 2.1 economic multiplier of indirect or induced jobs.¹ Also, there are the lost revenues (i.e. forest reserves) to the County which go primarily to schools and roads. All these losses are secondary effects and have a tremendous economic impact on rural communities. The same could be said for recreational opportunities. Recreational fishing, particularly at high elevations, and all its secondary benefits could be severely impacted with the designation. Economic scholarship is clear that a guidepost of proper analysis is awareness of secondary effects. The incremental approach fails to adequately address pertinent and potentially substantial secondary effects of the critical habitat designation.

2. Analysis fails to address *Batrachochytrium dendrobatidis* (Bd) as a verified threat, and the economic cost of eradicating the Chytrid fungus.

Chapter 1 (1.5, #40) lists a number of economic activities that have the potential “affect the Sierra Nevada yellow-legged frog and the northern DPS of the mountain yellow-legged-frog and their habitat.” Yet, Fish and Wildlife Service studies show the decline of the species has been linked to two factors: (1) the introduction of non-native trout, and (2) the spread of *Batrachochytrium dendrobatidis* (Bd). Human activity (activity that generates economic exchange) has had no to little effect on the amphibians; the Service has stated this publicly. Considering these factors, the designation of critical habitat does nothing more than restrict economic activity.

Preserving a habitat where *Batrachochytrium dendrobatidis* thrives will only lead to further declines of the species. Adequate maintenance of critical habitat requires removal of non-native trout and eradication of Bd. Certainly, these actions have associated economic costs. Failure to account for those costs leaves the economic impacts associated with true protection of the subject species understated and leads to a need for a more robust economic analysis.

3. The absence of quantitative economic benefits provides no reference point for comparative economic analysis.

The analysis notes multiple times that, “Rather than rely on economic measures the Service believes that direct benefits of the Proposed Rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemakings (Executive Summary #17, Chapter 2 #83).” The Board of Supervisors remains extremely concerned on this point. While the analysis fails to provide any estimate of lost economic activity, we are expected to accept the notion that, whatever the loss, we will be compensated in biological returns.

Economically speaking, this is a problem of non-quantifiable costs and benefits and it leaves the County in the position of comparing “apples to oranges.” Measuring the

¹ William McKillop, “Economic Impacts of Revised 2001 Ancient Trees Initiative”, 2001, Appendix I

biological benefits renders the benefits of the critical habitat designation completely subjective and provides no monetary measure to weigh against the expected costs. In other words, there is no reliable cost to benefit ratio that can be examined or critiqued. In true economic terms, expressing the benefits in biological terms destroys the notion of “ceteris paribus” – all things held constant – because it interferes with the parallel relationship of economic measures. The analysis claims that “social welfare benefits” can result from special protection but, this again, is a subjective determination. Furthermore, it is an example of the fallacy of division: what is good for society must also be good for the individual.

From a policy-setting perspective, the intention is obvious. By using subjective determinations the benefits will always outweigh the costs. This sets a dangerous precedent. It undermines the legitimate concerns of the affected parties and essentially makes the economic analysis irrelevant.

4. The analysis does not anticipate any additional conservation for the amphibians above baseline protections.

As described above, “baseline protections” are those protections that are already statutorily or administratively imposed without the critical habitat designation. Therefore, the benefits of the designation can only be realized in the implementation of additional or different management practices. Yet, the analysis repeatedly states that changes in the “management of aquatic and riparian ecosystems are unlikely to occur as a result of the section 7 consultation process (Executive Summary #28).” Moreover, any additional conservation is not anticipated “except in limited instances that the Service is unable to predict at this time (Chapter 5 #183).” If this is the case, then the Board must question the necessity of the designation to begin with. The Service has already identified non-human causes for the amphibian population decline, and now asserts that changes in ecosystem management are unlikely to occur with a critical habitat designation. It strains the credibility of the Service to insist that a habitat designation is needed to conserve amphibian populations, yet the designation would do little to nothing to provide protections above the baseline. Instead of spending the money to designate land as critical habitat, the Board believes the Service should rely on statutory protections already in place and listed throughout the analysis (i.e. Wilderness Act of 1964, Sierra Nevada Forest Plan Amendment).

In conclusion, the choice to designate critical habitat for three Sierra Nevada California amphibians rests with the Fish and Wildlife Service. And it is just that, a choice. As the analysis points out, the incremental impacts (consultation costs) “both positive and negative, will only occur if critical habitat is designated (Executive Summary #4).” If the designation provides no extra protections above the baseline, we question whether the \$630,000 to \$1.5 million estimated to be spent is a wise use of taxpayers’ dollars. Moreover, the Board of Supervisors does not believe the above cost is truly reflective of the costs in lost revenue due to restricted access of public lands. Just recently, forty-two OHV routes in the El Dorado National Forest were adjudicated to be out of compliance with the environmental guidelines for meadow crossings. In review of these routes, the Forest Service took into account the proposed listing of critical habitat

for the relevant amphibian species. Today, eighteen of those routes remained closed. While we do not contend that the routes remain closed solely because of the proposed listing, we do contend that the proposed listing is already affecting land use policy in a way not taken into account by the draft economic analysis. As stated above, it is the unaddressed secondary effects we remain concerned about. Additionally, we are concerned about the “opportunity costs” of self-imposing Section 7 consultation. As an entity which interacts often with federal agencies we appreciate the workload that is already required of federal officials. In fact, it is no secret that the decision by the Fish and Wildlife Service to pursue a critical habitat designation is the result of a settlement agreement for failing to meet statutory deadlines. We can only wonder what further delays will result from consultation should the designation be affirmed.

The El Dorado County Board of Supervisors is also troubled by the subjective criteria used to determine the costs/benefits analysis and the standard it sets for federal land-use policy. Using non quantifiable costs and benefits undermines the credibility of the agency’s efforts and leaves the County with no relevant information to review. This is coupled with the fact that the cost of neutralizing genuine threats to the amphibians were not taken into account and that critical habitat designation will not provide any further protections above the baseline. The Board of Supervisors believes the Draft Economic Analysis of the Critical Habitat Designation for Three Sierra Nevada California Amphibians is insufficient in determining the real costs and benefits.

Sincerely,



Norma Santiago, Chair
Board of Supervisors
County of El Dorado