



Coalition Of Arizona/
New Mexico Counties
For Stable Economic
Growth

*"Working together for responsible
management."*

May 16, 2011

Public Comments Processing,
Attn: FWS-R2-ES-2010-0085

Dr. Benjamin Tuggle, Regional Director
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Federal eRulemaking Portal: <http://www.regulations.gov>. Comments to Docket No. FWS-R2-ES-2010-0085

**RE: Comments on Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog;
Proposed Rule (Federal Register / Vol. 76, No. 50 / Tuesday, March 15, 2011 / Proposed Rules Pages
14126 - 14207)**

Dear Dr. Tuggle and Steve Spangle,

The Coalition of Arizona/New Mexico Counties (Coalition)¹ is providing the attached comments on the proposed uplisting of the Chiricahua Leopard Frog (CLF) prepared by Darling Environmental Services. We are concerned that the proposal for uplisting and declaration of critical habitat for this species will result in severe economic impact to the affected region and be detrimental to the conservation of this specie.

As in the past the individual county members of the Coalition stand ready to assist the U.S. Fish and Wildlife Service (Service) in the development of effective conservation plans for the CLF. We also look forward to assisting with the preparation of the economic impact analysis and NEPA document as cooperating agencies. We expect that the Service will be inviting the affected counties to participate in these processes as I.D. team members for these purposes. The individual county members would like to work with you to develop the appropriate MOUs to establish the proper working relationships and define the roles and responsibilities of

¹The Coalition is comprised of the Arizona Counties of Cochise, Gila, Graham and Greenlee and New Mexico Counties of Catron, Chaves, Eddy, Harding, Hidalgo, Lincoln, McKinley, Otero, Rio Arriba and Sierra along with representation from livestock, timber, mining, sportsmen, outfitter, farming and small business industries, as members of the Coalition of Arizona/New Mexico Counties (Coalition). The population of the combined membership exceeds 488,167.

each party. As in the past the Coalition stands ready to assist the Service in coordinating the crafting of the MOU and facilitating participation by the affected member counties in the preparation of the required documents.

Sincerely,



Richard Searle, President


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May 12, 2011

Public Comments Processing,
Attn: FWS-R2-ES-2010-0085

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RE: Comments on Listing and Designation of Critical Habitat for the Chiricahua Leopard Frog; Proposed Rule (Federal Register / Vol. 76, No. 50 / Tuesday, March 15, 2011 / Proposed Rules Pages 14126 - 14207)

On behalf of the Coalition of Arizona and New Mexico Counties (Coalition)¹, we have reviewed the Proposed Rule to list and designate critical habitat for the Chiricahua leopard frog (*Lithobates chiricahuensis*) (76 Federal Register 50, Tuesday, March 15, 2011, Page 14126 et seq.). We conclude that scientific data does not support the proposed designation of critical habitat.

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Purpose/Executive Summary

Pursuant to the request by the U.S. Fish and Wildlife Service (USFWS) for comments on the proposal to designate critical habitat for the Chiricahua leopard frog (*Lithobates chiricahuensis*), (herein referred to as “CLF”), the following issues, concerns, observations and suggestions are provided. We hope this report assists the Service in decisions regarding the designation of critical habitat for the CLF.

The proposed rule does not meet the Data Quality Act of 2000 (Paperwork Reduction Act. 44 U.S.C. 3501 et seq amendment) (herein referred to as “DQA”) standards. Instead it ignores the best scientific information available and bases many of its conclusions on supposition and speculation about the future. Critical habitat designation is not warranted.

FR Page 14128 Column 3 – “Chiricahua leopard frogs are reasonably likely to disperse 1.0 mile (mi) (1.6 kilometers (km)) overland, 3.0 mi (4.8 km) along ephemeral or intermittent drainages (water existing only briefly), and 5.0 mi (8.0 km) along perennial water courses (water present at all times of the year), or some combination thereof not to exceed 5.0 mi (8.0 km). This is often referred to as the “1–3–5 rule” of dispersal. “

Comment: Dispersal movement by individuals or portions of populations or megapopulations may be due to overcrowding and/or competition which are certainly not uncommon in size-limited habitats. These movements may ultimately cull weak or young individuals from the population, which reflects classical “survival of the fittest” allowing the strongest to reproduce. The “1-3-5 rule” is cited although in practical terms it does not consider the most crucial element in the success of dispersal—finding suitable habitat. The uncertainties of climate may have a strong influence on the availability of habitat, its longevity, and its spatial distribution. The subspecies is mobile and may respond to wet and dry periods in ways that are not being anticipated or considered.

Assisted migration of animals has become a reality in population management all over the world. In the case of the CLF, if the Service will cooperate with private land owners and allow movement of CLF between stock tanks that do not have bullfrogs and other nonnative species that outcompete, the Service will do more to protect CLF than listing critical habitat.

If instead, the Service lists critical habitat, it will benefit ranchers and other private landowners to allow bullfrogs to take over water sources and allow certain stock tanks that aren’t in use to dry up to preclude the possibility of harboring the CLF. This is a harsh reality of overzealous regulations, especially in a bad economy where people are saving time and money wherever possible.

The Service has an opportunity to work to incentive private landowners and increase CLF populations by deciding NOT to designate critical habitat. We recommend this approach.

FR Page 14128 Column 3 – “Overall, the Chiricahua leopard frog has made modest population gains in Arizona in spite of disease and predation, but is apparently declining in New Mexico because of these threats. We consider disease, specifically chytridiomycosis, and predation by nonnative species to be threats affecting the species such that the species is likely to become endangered within the foreseeable future. “

Comment: The invasion of many water habitats by the predatory bullfrogs and/or non-native fish has contributed to the decline of the species in many habitats. Efforts to control these predators have been ineffective due, in part, to their ability to withstand control measures and the ineffective methods themselves. Reintroduction of the subspecies into habitats where these predators are present would be an exercise in futility. Bullfrog control/take methods allowed under hunting regulations are too restrictive and usually ineffective in small stock tanks. The use of air rifles or small caliber firearms could easily be used in these normally isolated habitats with little risk. Application of such methods in larger settings is inappropriate due to safety concerns.

Ranchers and other private landowners periodically drain and clean stock tanks. The landowners can be instrumental in eliminating bullfrogs from isolated waters that can harbor CLFs. They need incentives to want to have CLFs on their property. Again, the Service has an opportunity to continue to work with these people or create an adversarial situation where the real loser is the CLF.

FR Page 14129 Column 2 – “A copper mine (the Rosemont Mine) has been proposed in the northeastern portion of the Santa Rita Mountains, Pima County, Arizona (recovery unit 2), the footprint of which includes several sites recently occupied by Chiricahua leopard frogs. Recent research indicates that Chiricahua leopard frog tadpoles are sensitive to cadmium and copper above certain levels (Little and Calfee 2008, pp. 6–10), making the introduction of copper into Chiricahua leopard frog habitat a possible significant threat. No analyses have been conducted yet to quantify how the frogs and their habitats may be affected in that region (*emphasis added*), which potentially includes the Bureau of Land Management’s Las Cienegas National Riparian Conservation Area; however, a draft environmental impact statement will likely be published in 2011.

Comment: Reference to the proposed Rosemont Mine seems gratuitous but given the pressures applied to government agencies by lobbying groups opposed to the project it is not unexpected.

As underlined above, “No analyses have been conducted yet to quantify how the frogs and their habitats may be affected in that region...” This statement provides ample evidence of the nature

of the problem. It also presents an opportunity for agencies to work with project proponents to insure that the CLF and other species are preserved. This is a difficult alliance especially when project proponents and agency personnel are vilified in public meetings by lobbyists who oppose any agreement. This tactic is an embarrassment to all and does not benefit the CLF.

FR Page 14130 Columns 1 & 2 - “The recent genetic study revealed no systemic lack of genetic diversity within the Chiricahua leopard frog as a species (Herrmann *et al.* 2009, pp. 12–17). In fact, populations were quite variable; up to 16 different genetic groupings were found. This does not preclude the possibility that individual populations may suffer from genetic or demographic problems, but the study shows the species retains good genetic variability (*emphasis added*).”

Comment: The above underlined statement is clearly the product of zealous but unintelligent pursuit of environmental objectives by agency officials on the basis of nothing more than speculation and surmise contradicted, by the best scientific and commercial information available. The best scientific information available demonstrates that genetic diversity is not a problem for CLF. However, the Service goes out of its way, in spite of solid science, to speculate about genetic and demographic impacts to small populations of CLF, in clear violation of the Data Quality Act.

The possible threats listed are common to virtually all small populations in both the plant and animal kingdoms. They are not unique. If an isolated population is found to lack of genetic diversity the problem can be solved by introducing frogs of the same species from different locations into the isolated areas to assure genetic mixing. Designation of critical habitat would only make it more difficult to move frogs when necessary.

The agency speculation certainly does not amount to a reason for the proposed critical habitat designation. Instead, it violates the Data Quality Act.

FR Page 14131 Columns 1 & 3 – “Due primarily to ongoing conservation measures and the existence of relatively robust populations and metapopulations, we have determined that the species is not in immediate danger of extinction (*i.e.*, on the brink of extinction). However, because we believe that the present threats are likely to continue in the future (such as chytrid fungus and nonnative predators spreading and increasing in prevalence and range, affecting more populations of the leopard frog, thus increasing the threats in the foreseeable future), we have determined that the Chiricahua leopard frog is likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future.”

Comment: The Services presumption that there are “future” threats clearly fails to pass DQA standards because that presumption is based solely on speculation and surmise contradicted by the best scientific and commercial information available.

The San Pedro Riparian National Conservation Area (SPRNCA), FY 2009 Annual Manager's Report states that six springs, monitored by the BLM wildlife biologist and hydro tech were "proven to have adequate water quantity and quality to support reintroduction efforts of four native species" including the CFL. These sites were visited by "cooperators from Arizona Game and Fish (AGFD) and USFWS." These reintroduction activities are an important addendum to those mentioned in the March 15, 2011 proposal. SPRNCA is endeavoring to achieve conservation of the CLF despite ongoing budget limitations. Perhaps a more overt cooperative effort with BLM, AGFD and USFWS needs to be considered.

FR Page 14131 Column 1 – "Moreover, climate change, particularly in the form of increased water temperatures, does not seem to pose a significant threat to the Chiricahua leopard frog into the foreseeable future. As such, other natural or manmade factors affecting the species' continued existence do not appear to be a threat affecting the Chiricahua leopard frog such that the species is likely to become endangered within the foreseeable future. "

Comment: Agreed.

FR Page 14139 Table 2

Comment: The amount of Private Land in Table 2 appears to be high. If the exempted areas (Table 3) and their associated waterways are eliminated the actual amount of private land is greatly reduced. It would seem that participants in exemption areas (Table 3) are a resource that the Service has not used effectively. A panel of participants could be the explaining, recruiting, evaluating, and approving body for Safe Harbor Agreements and other similar actions. The Service should act in consideration of their recommendations.

There are serious trust issues between the private sector and federal agencies. The skepticism is both in regard to the agency as a whole and to individuals who act independently as representative of federal agencies in reaction to lobbying group pressure. Consultation with a peer group (i.e. Table 3) that has completed the process may help those who have been alienated by past agency actions.

If critical habitat designation is important, then perhaps the Service negotiations should be conducted by higher-level Regional personnel who are less likely to be impacted or hampered by lobbyists or prejudices towards specific types of activity regardless of the potential for impact on a T&E species.

FR Page 14155 Column 2 – "The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as

part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.”

Comments: The designation of critical habitat in small stock tanks on private land may ultimately lead to the loss of these habitat areas. Scattered stock tanks on private land have been established and maintained to provide water for livestock over many years. Their use naturally ebbs and flows with the supply and demand issues of the cattle industry itself. Some of these tanks have become serendipitous temporary or permanent habitat for water-dependent species including CFL. Some ranchers have taken steps to enhance and/or perpetuate these tank habitats specifically to benefit the CLF. Some have entered into Safe Harbor Agreements with USFWS and many have not.

The cattle industry in the southwest has been impacted by the national economy, dietary patterns and government regulation. These supply and demand issues impacting this industry have reduced herd sizes and the need for some tank resources. The cost of maintaining these tanks may not be in the best economic interest of ranchers.

Continued efforts to curtail grazing are counterproductive and potentially lethal to the species. As practiced in Arizona today, the majority of cattle grazing are based on scientific analysis of range condition. Forage species composition is monitored, weed and other undesirable species composition is controlled, and fencing, corrals, and stock tanks are maintained. Without grazing stock tanks will not be maintained adequately, if at all, by the new caretakers of the land.

Abusive grazing practices of the past are not being repeated on today’s range yet environmentalists and some government agencies insist on living in the past and blaming cattle for any perceived problem. “Riparian vegetation has increased significantly in many reaches irrespective of the presence of grazing cattle” (Webb et al. 2007). “How much the late-twentieth-century increases in riparian vegetation can be attributed either to grazing reductions or to other climatic and hydrologic factors remains an open question” (Webb et al. 2007).

FR Page 14161 Column 1 – “The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties.”

Comment: This sentence needs to be moved to the first page of the proposed rule. As stated it does not preclude that “legally binding duty” may be perceived by private parties and imposed by government agency personnel in negotiations or reviews of permit applications. The misuse or misinterpretation of critical habitat by lobbyists, agencies, and individuals has led to the trust issues that negatively impact the intended target of the Endangered Species Act (ESA)...the species.

SUMMARY

Designation of small, privately held stock tanks as critical habitat for the CLF is not in the best interest of the species. The serendipitous use of these habitats by CLF is a benefit provided by members of the ranching community and should be valued, encouraged, and permitted to continue as presently maintained.

Designating critical habitat would mean that agency and private individuals have failed to take notice of the CLF and manage its habitat. We know this is not true as evidenced of successes on private land and increases in the number of locations of CLF populations and individuals.

The exclusions proposed in the Federal Register are not enough. Instead of using critical habitat as a hammer that will negatively impact the willingness of ranchers and other private individuals to work with federal and state agencies on threatened and endangered species management, we strongly encourage that the Service work with private land owners without the threat of this kind of deterrent.

A very basic question needs to be addressed further before a decision is made that would include private lands in the CLF critical habitat designation: "Why does the Service want to alienate the very people who can help increase the number of CLFs?"

Prepared by Darling Environmental & Surveying, Ltd

Douglas Warren, PhD

and

Mary E. Darling, MD, JD

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