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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS-R8-ES-2012-0100; FWS-R8-ES-2012-0074]

[4500030113]

RIN 1018-AZ21; RIN 1018-AY07

Endangered and Threatened Wildlife and Plants; Endangered Status for the Sierra Nevada Yellow-legged Frog and the Northern Distinct Population Segment of the Mountain Yellow-legged Frog, and Threatened Status for the Yosemite Toad and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of the comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our April 25, 2013, proposed rule to list the Sierra Nevada yellow-legged frog and the northern distinct population segment (DPS) of the mountain yellow-legged frog (populations that occur north of the Tehachapi Mountains) as endangered species, and the Yosemite toad as a threatened species under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period on our April 25, 2013, proposed rule to designate critical habitat for these species. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad and an amended required determinations section of the proposal. We are also announcing the location and time of a public hearing to receive public comments on the proposals, as well as the times and locations of two public meetings. We are reopening the comment periods to allow all interested parties an opportunity to comment simultaneously on the proposed rules, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments on the proposed rules published April 25, 2013 (78 FR 24472 and 78 FR 24516) received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public Hearing: We will hold a public hearing on these proposed rules in Sacramento, California, on January 30, 2014, at 1:00 pm and again at 6:00 pm (see **ADDRESSES**).

Public Meetings: We will hold two public meetings to provide information on these proposed rules in Bridgeport, California, on January 8, 2014, from 1:00 pm to 3:00 pm and in Fresno, California, on January 13, 2014, from 1:00 pm to 3:00 pm (see **ADDRESSES**).

ADDRESSES:

Document availability: You may obtain copies of the proposed rules and the associated documents of the draft economic analysis on the internet at <http://www.regulations.gov> at Docket No. FWS–R8–ES–2012–0100 and Docket No. FWS–R8–ES–2012–0074 or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

- (1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for Docket No. FWS–R8–ES–2012–0100 (the docket number for the proposed listing rule) or FWS–R8–ES–2012–0074 (the docket number for the proposed critical habitat rule).

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0100 (if commenting on the proposed listing rule) or FWS–R8–ES–2012–0074 (if commenting on the proposed critical habitat rule); Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

Public informational sessions and public hearing: The public informational sessions and hearing will be held at Mono County Board of Supervisors Chambers in the Mono County Courthouse, State Highway 395 North, Bridgeport, CA 93517, and the Fresno County Board of Supervisors Chambers in the Hall of Records, Room 301, 2281 Tulare Street, Fresno, CA 93721. The hearing will be held at the Sacramento Horsemen’s Association, 3200 Longview Drive, Sacramento, CA 9582. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Jennifer Norris, Field Supervisor, Sacramento Fish and Wildlife Office, as soon

as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way Room W-2605, Sacramento CA 95825; by telephone 916-414-6600; or by facsimile 916-414-6712. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed rule to list the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog as endangered species, and the Yosemite toad as a threatened species, that was published in the **Federal Register** on April 25, 2013 (78 FR 24472). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species, and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range,

distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for these species and their habitats.

(4) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act 16 U.S.C. 1531 et seq.), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(5) Land use designations and current or planned activities in the areas occupied by the species, and possible impacts of these activities on these species.

(6) Information on the projected and reasonably likely impacts of climate change on the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad.

(7) Input on whether we should retain the northern and southern DPSs of the mountain yellow-legged frog in the final rule or should we combine the two DPSs into one listed entity for the species.

We will also accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, which was published in the **Federal Register** on April, 25, 2013 (78 FR 24516), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and Yosemite toad, and their habitats;

(b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) Which areas currently occupied contain features essential to the conservation of these species should be included in the designation, and why; and

(f) Which areas not currently occupied are essential for the conservation of these species, and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on these species and their proposed critical habitats.

(4) Information on the projected and reasonably likely impacts of climate change on the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, and on their proposed critical habitats and whether the critical habitat may adequately account for these potential effects. We also seek information on special management considerations or protection that may be needed in the proposed critical habitat areas, including management for the potential effects of climate change.

(5) Any probable economic, national security, or other relevant impacts that may result from designating any area as critical habitat that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(6) Information on the extent to which the description of probable economic impacts in the DEA is complete and accurate, and specifically:

(a) Whether there are incremental costs of critical habitat designation (for example, costs attributable solely to the designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act; and

(b) Whether there are additional project modifications that may result from the designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, and what those potential project modifications might represent.

(7) The likelihood of adverse social reactions to the designation of critical habitat

as discussed in the DEA and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Whether any specific areas proposed for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(9) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (78 FR 24516) during either of the previous comment periods from April 25, 2013, to June 24, 2013, or July 19, 2013, to November 18, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during the comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not

appropriate for exclusion.

You may submit your comments and materials concerning the proposed rules or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, proposed critical habitat, and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket Number FWS–R8–ES–2012–0100 for the proposed listing and Docket Number FWS–R8–ES–2012–0074 for the proposed critical habitat, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule to designate critical habitat and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS–R8–ES–2012–0100 for the

proposed listing and Docket Number FWS–R8–ES–2012–0074 for the proposed critical habitat, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in this document. For more information on previous Federal actions concerning the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, refer to the proposed designation of critical habitat published in the **Federal Register** on April 25, 2013 (78 FR 24516). For more information on the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad or its habitat, refer to the proposed listing rule published in the **Federal Register** on April 25, 2013 (78 FR 24472). Both are available online at <http://www.regulations.gov> (at Docket Number FWS–R8–ES–2012–0074 for the listing and Docket Number FWS–R8–ES–2012–0100 for the critical habitat designation) or from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On April 24, 2013, we published a proposed rule to designate critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged

frog, and the Yosemite toad (78 FR 24516). We proposed to designate approximately 447,341 hectares (1,105,400 acres) as critical habitat for the Sierra Nevada yellow-legged frog in Butte, Plumas, Lassen, Sierra, Nevada, Placer, El Dorado, Amador, Calaveras, Alpine, Mariposa, Mono, Madera, Tuolumne, Fresno, and Inyo Counties, California as critical habitat; approximately 89,637 hectares (221,498 acres) as critical habitat for the northern DPS mountain yellow-legged frog in Fresno and Tulare Counties, California; and approximately 303,889 hectares (750,926 acres) as critical habitat for Yosemite toad in Alpine, Tuolumne, Mono, Mariposa, Madera, Fresno, and Inyo Counties, California. That proposal had an initial 60-day comment period, ending June 24, 2013; however, we reopened the comment period from July 19, 2013, to November 18, 2013 (78 FR 45122). We anticipate submitting for publication in the **Federal Register** a final critical habitat designation for Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad on or before April 25, 2014, if we finalize our proposed rule to list the species under the Act.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed,

upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any

ancillary benefits triggered by existing local, State or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; and the implementation of a management plan. In the case of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad, the benefits of critical habitat include public awareness of the presence of these species, and the importance of habitat protection. Where a Federal nexus exists, critical habitat would benefit the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad through increased habitat protection due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies. We have not proposed to exclude any areas from critical habitat.

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. The DEA separates conservation measures into two distinct categories according to

“without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation of critical habitat. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “Framework for the Analysis,” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad over the next 17 years. This timeframe was determined to be the appropriate period for analysis because planning information is not available for most activities to forecast activity levels for projects beyond a 17-year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation. These incremental costs are

associated with the designation of critical habitat and are above those baseline costs attributed to listing.

The DEA quantifies economic impacts of the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad conservation efforts associated with the following categories of activity: (1) fish stocking/persistence; (2) dams and water diversions; (3) grazing; (4) fuels management; (5) timber harvests; (6) recreation; and (7) habitat and species management.

The DEA concludes that incremental impacts resulting from the critical habitat designation are limited to the administrative costs of considering adverse modification in section 7 consultation. Estimating the impact of a regulation on future outcomes is inherently uncertain, as well as estimating the timing and duration of the administrative costs associated with section 7 consultation. Due to the uncertainty in the specifics of how Federal agencies will fulfill their section 7 requirements, cost estimates were calculated for a low-end scenario (single range-wide consultation) and a high-end scenario (project-by-project consultation). The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 17 years (2014 to 2030) to be approximately \$630,000 (\$60,000 annualized) under the low-end scenario and approximately \$1.5 million (\$140,000 annualized) under the high-end scenario. These impact estimates are in present-value terms and apply a 7 percent discount rate (Industrial Economics Incorporated 2013, p. 4-1).

Under the low-end scenario, costs related to dams and water diversions represent approximately 75 percent of overall incremental impacts, while costs for grazing and timber harvest activities represent approximately 8 and 5 percent of forecast impacts, respectively. In the high-end scenario, costs related to timber harvest activities represent approximately 49 percent of overall incremental impacts, with dams and water diversion activities representing 32 percent, and grazing activities representing 15 percent.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rules and our amended required determinations. We may revise the proposed rules or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our April 25, 2013, proposed rule (78 FR 24516), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential

effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The

SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as fish stocking, dams and water diversions, grazing, fuels management, timber harvest activities, and recreation. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation does not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If the proposed listing is made final, in areas where the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, or the Yosemite toad is present, Federal agencies will be required to consult with us under section 7(a)(2) of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into that consultation process.

In the DEA, we evaluated the potential economic effects on small entities

resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Because the Service, the National Park Service, and the U.S. Forest Service are the only entities with expected direct compliance costs related to fish stocking, grazing, fuels management, and recreation, and these agencies are not considered small entities, this rule will not result in any impact to small entities regarding these activities. This rule has the potential to impact four small entities that operate dams and water diversion for power generation, and the impact is expected to range from 0.0003 to 0.01 percent of the entities' reported annual revenues. This rule also has the potential to impact small entities engaged in timber harvest activities on Federal lands. Given the limited information available to specifically determine which small entities may be impacted, we conservatively estimate that approximately 358 small entities associated with timber harvest activities may be impacted by this rule. While there is insufficient information to accurately quantify the impact to these small entities, we anticipate that approximately 4 percent of these entities will be impacted in any given year, and that the magnitude of impact will be small, as it is limited to the minor administrative costs of consultation. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required

to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal Agencies are not small entities and, to this end, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the

Yosemite toad does not pose significant takings implications for lands within or affected by the designation.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The DEA finds that impacts to the energy industry from this rule are expected to be limited to additional administrative costs. Thus, based on information in the DEA, energy-related impacts associated with the Sierra Nevada yellow-legged frog, the northern DPS of the mountain yellow-legged frog, and the Yosemite toad within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Authors

The primary authors of this document are the staff members of the Sacramento Fish and Wildlife Office, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 13, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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