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Court tells government to justify denying frog 'endangered' status

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A federal appeals court told the Bush administration Wednesday to reconsider its refusal to classify as endangered a frog whose population in the Sierra Nevada is dwindling.

The Ninth U.S. Circuit Court of Appeals in San Francisco said the government's explanation -- that its species-protection money was being consumed by lawsuits -- wasn't good enough. But the court stopped short of ordering the U.S. Fish and Wildlife Service to list the mountain yellow-legged frog as endangered, an action that would prohibit destruction of the frog's habitat and would require officials to come up with a strategy for its recovery.

Instead, the court said the federal agency must document its assertion that it can't protect the frog because other species-protection proposals have a higher priority, and that officials are making "expeditious progress" in adding endangered species to the protected list.

Fish and Wildlife Service spokesman Jim Nickles said the agency believes it can satisfy the court's requirements by providing a better explanation for its actions rather than changing course. The agency said in January 2003 that the frog should be protected but would have to wait because lawsuits and administrative wrangling over other species were eating up the available money.

The yellow-legged frog "is in trouble. We know that," Nickles said. "We are working with other agencies, including the Forest Service, on measures to conserve the species. They're doing a lot more for the frog than this kind of litigation."

Michael Sherwood, a lawyer for conservation groups that sought to list the frog as endangered, said the government should "take a new look at this and do the right thing."

Sherwood, who works for the nonprofit firm Earthjustice, said the Fish and Wildlife Service would have trouble documenting that it was making good progress in listing endangered species. He said that hundreds of other rare species are in the same situation as the yellow-legged frog and that the Bush administration had failed to ask Congress for enough money for species protection.

The yellow-legged frog, the only high-altitude frog species in the Sierra, has disappeared from about 80 percent of its historic range because of habitat loss, pesticides, a fungal infection and predation by non-native trout.

The Center for Biological Diversity and the Pacific Rivers Council asked the Fish and Wildlife Service to list the frog as endangered in February 2000. Three years later, the agency classified the creature as a candidate for future listing but did not specify a date for action.

In Wednesday's 3-0 ruling, Judge Pamela Rymer said the agency had failed to explain why protection of the frog had a lower priority than fighting off lawsuits or to demonstrate that it was making progress in protecting vulnerable species.