

## Calif. ranchers challenge critical habitat designations for frogs, toad

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By Steve Davies



CALIFORNIA, August 2, 2017 - Three California farm groups are taking a new tack in challenging Fish and Wildlife Service critical habitat designations for two frogs and a toad. Instead of claiming violations of the Endangered Species Act (ESA), they're going after FWS for not analyzing the impact of the designations on small businesses.

Specifically, the California Cattlemen's Association, California Farm Bureau Federation, and California Wool Growers Association say in a recently filed lawsuit that FWS should have prepared a Regulatory Flexibility Analysis before it declared 1.8 million acres of land in the state "critical" for the amphibians.

An RFA is a requirement of the federal Regulatory Flexibility Act and is supposed to give regulators a picture of the impacts of rules on small entities, including not just businesses but also local governments, according to the lawsuit, filed in Washington, D.C., on Monday. The law also "requires the (regulating) agency to consider alternatives to the rule that lessen significant impacts."

FWS said in its rule designating critical habitat (CH) for the species – the Yosemite toad and two species of yellow-legged frogs – that only federal regulatory agencies would be directly affected, because of the ESA requirement that federal agencies consult with FWS on the effects of their actions – like management of dams, for example – on threatened or endangered species.

"Therefore, because federal agencies are not small entities, the service may certify that the proposed critical habitat rule, as well as this final designation, will not have a significant economic impact on a substantial number of small entities," FWS said in the rule.

Ranchers are worried about the impact of the designations on their ability to graze, as about two-thirds of the 1.8 million acres of the designations "are actively grazed by federal grazing permittees," the three groups said in comments submitted on the proposed CH

designations in 2014.

“When the service proposed designating critical habitat for these three amphibians, they heard from some ranchers who would have to sell off as much as half of their herd because of forage lost to the designation, and others who would be put out of business entirely,” said Dave Daley, president of the California Cattlemen’s Association.

FWS, however, said in its final designations, which appeared nearly a year ago, that the designation “is not anticipated to result in the loss of or reduction in grazing activities on federal lands designated as critical habitat.” The Forest Service, FWS said, “has routinely considered measures to protect the amphibians and their habitat since the three amphibians were designated as ‘sensitive species’ (by the Forest Service) in 1998.”

Pacific Legal Foundation attorney M. Reed Hopper said he isn’t aware of “specific instances” where grazing has been restricted, “but it appears the government is restricting grazing access on federal lands.”

In a news release announcing the lawsuit, PLF says the designations, which cover terrain “in 16 counties stretching from Tulare and Inyo in the south to Lassen in the north,” have been controversial from the start. “They will restrict the use of public and private lands for grazing and timber harvesting affecting ranchers, landowners, and county agencies, including school districts that derive income from timber production,” PLF said.

The Center for Biological Diversity, which sued to gain protection for the species, will intervene in the case “to ensure that the much needed crit-