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**Submitted via Federal eRulemaking Portal**  
<https://www.regulations.gov/>

Michael Fris  
Field Supervisor  
U.S. Fish and Wildlife Service  
Sacramento Fish and Wildlife Office  
2800 Cottage Way  
Sacramento, CA 95825

**RE: Docket ID No. FWS-R8-ES-2021-0108 Endangered and Threatened Wildlife and Plants; Foothill Yellow-Legged Frog; Threatened Status with Section 4(d) Rule for Two Distinct Population Segments and Endangered Status for Two Distinct Population Segments**

Dear Mr. Fris:

The organizations listed below appreciate the opportunity to provide comments on the U.S. Fish and Wildlife Service (Service) Proposed Rule to list four of six distinct population segments (DPSs) of the foothill yellow-legged frog (*Rana boylei*), a stream dwelling amphibian from Oregon and California, under the Endangered Species Act of 1973 (Act), as amended. Per the December 28, 2021 Federal Register notice, the Service is specifically proposing to list the South Sierra and South Coast DPSs as endangered and the Feather and Central Coast DPSs as threatened. The North Feather and Central Coast DPSs would also each include a rule issued under section 4(d) of the Act.

Cumulatively, our membership either resides in or manages nearly 50% of the state's land as well as substantial water resources, making our organizations particularly concerned with the potentially negative impact of this proposal. If finalized, the Proposed Rule would impact 25 counties across California including Alameda, Amador, Butte, Calaveras, Contra Costa, El Dorado, Fresno, Kern, Los Angeles, Madera, Mariposa, Merced, Monterey, Plumas, San Benito, San Luis Obispo, San Mateo, Santa Barbara, Santa Cruz, San Joaquin, Stanislaus, Tehama, Tulare, Tuolumne, and Ventura. As organizations that represent agriculture, water managers and rural communities in the counties listed above, we must oppose the proposed listing due to the irreparable damage that we anticipate would occur.

**LISTING COMMENTS**

*There are Substantial Existing Protections for the Species*

Cumulatively, the organizations listed below are committed to conserving biological diversity including threatened, endangered, and at-risk species. However, we are also concerned with duplicative layering of regulation that may result in overlapping schemes for land and water managers and counties that may result in barriers to proven land and water management strategies without additional benefit to species.

The Proposed Rule fails to acknowledge existing regulatory protections for the foothill yellow-legged frog. As of March 20, 2020, the Southwest/South Coast, West/Central Coast and East/Southern Sierra clades of the species have been listed as Endangered under the California Endangered Species Act (CESA). Additionally, the Northeast/Northern Sierra and Feather River clades were also listed as threatened under CESA. These protections are similar to if not more stringent than federal Act protection through its prohibition of take of listed species. The

proposed rule recognizes that the species is listed under CESA. With CESA listing, blanket take authorizations are not allowed, and activities must be granted individual take authorizations, which require that any take be “*incidental to an otherwise lawful activity*” and be “*minimized and fully mitigated*” (Fish and Game Code Section 2081). The protections already afforded under CESA, in our view, raises the question of whether an additional listing is necessary or simply duplicative.

*Section 4(d) Rule Should Be Reevaluated to Include Compliance with the California Forest Practice Rules and Similar Mechanisms That Seek to Mitigate and Avoid Incidental Take*

For the two DPSs the Service proposes to list as threatened (North Feather and Central Coast DPSs), the Service also proposes a Section 4(d) rule that would apply the take prohibition in the Act and then provides certain exceptions from the incidental take prohibition. We request that the Service consider expanding the section 4(d) Rule. The status report discusses activities that may be a threat to the species, such as timber harvest, but does not provide adequate context. Currently, the exceptions included in the Proposed Rule are limited to:

1. Measures approved by the Service to conduct wildfire prevention activities, non-emergency suppression activities and other silviculture best management practices that are in accordance with an established forest or fuels management plan and that include measures that minimize impacts to the species and its habitat.
2. Habitat restoration efforts that specifically provide for the habitat needs of the North Feather DPS and Central Coast DPS of the foothill yellow-legged frog as approved by the Service and include measures that minimize impacts to the species and its habitat are appropriate for an exception. Efforts focused on other species would not be included in this exception without written approval from the Service.
3. Removal and restoration of trespass cannabis cultivation sites as approved by the Service
4. Actions with the primary or secondary purpose of removing nonnative animal species that compete with, predate upon, or degrade the habitat of the foothill yellow-legged frog that are conducted in unoccupied habitat and approved by the Service.

While our organizations support the exceptions listed above, we believe they are overly limited in nature and fail to recognize the positive contributions to conservation and mitigation provided by additional mechanisms. This includes existing compliance with the California Forest Practice Rules (CFPRs) and the California Department of Fish and Wildlife (CDFW) Lake and Streambed Alteration Agreement (1600 permits).

For example, the CFPRs are a comprehensive set of rules in compliance with the California Environmental Quality Act. When a timber harvest project is developed, full environmental scoping of impacts to sensitive, candidate and listed species are evaluated for each project's potential for adverse environmental impacts. Specific risk assessments and development of mitigation measures are also required. Surveys of the species must also often occur, and site-by-site mitigations are developed in coordination with CDFW to avoid take of the species. Additionally, the CFPRs require water course buffers and equipment setback limitations that mitigate the threats of timber harvesting in all instances. Additionally, both the CFPRs and 1600 permits reduce threats to insignificance at road crossings that disturb the banks and bed of a stream and at water drafting sites where species are present.

The long-term viability of the foothill yellow-legged frog, as with many other wildlife species, can be intimately tied to the condition of their habitat. Therefore, we believe the Service should further expand the section 4(d) Rule to allow for additional exceptions that result in positive land management outcomes that in turn help species. This should include proven strategies such as the sustainable forest management practices described above as well as managed livestock grazing. We believe expanding the list of exceptions to include more land management

tools would assist with conserving habitat for the species, increase sequestration, and result in better forest management and reduction of fine fuels for catastrophic wildfire risk reduction.

#### *Exclusion of North Coast and North Sierra Distinct Population Segments*

The Service has determined that the North Coast DPS (in Oregon and northern California) and the North Sierra DPS (in Yuba, Sierra, Nevada, and Placer Counties, California) of the foothill yellow-legged frog do not warrant listing at this time. Our organizations support the Service's decision to exclude these DPSs based on the healthy abundance and distribution of foothill yellow-legged frog within the DPS. For example, working forests in the North Coast DPS region provide a variety of resources and benefits and private forest owners have invested in surveys of populations and habitats for species including the foothill yellow-legged frog. This includes management activities by private industry covered under a Habitat Conservation Plan and a Candidate Conservation Agreement with Assurances approved in 2007.

#### *Water Management*

The Proposed Rule references a species status assessment that identifies several threats related to water management. These include:

- Altered stream hydrology and flow regimes associated with dams, surface water diversions, and channel modifications
- Effects of climate change, including increased temperatures, drying and drought, and extreme flood events
- Habitat modification and altered hydrology as a result of conservation efforts for salmonid species (colder water temperatures, timing and intensity of water flows)

In California, water infrastructure provides multiple benefits including drinking water, water for growing food and fiber, recreation, flood control, water for ecosystems, energy production and more. Because of this, water managers have a significant stake in the effective, consistent, and efficient implementation of the Act informed by the best available science and data. Unfortunately, water managers are all too familiar with single species management in impacted watersheds. For instance, managing timing and flow for the foothill yellow-legged frog in addition to salmon, smelt, etc. could have significant implications for water project management, water supply reliability and flood control in California. This much be considered should the Service issue a Final Rule and/or designate critical habitat in the future that requires associated management actions.

The proposal states that dams, water management, and other waterway modifications *can* alter the hydrology, timing, temperature, and morphology of foothill yellow-legged frog stream habitat. We are concerned that the Proposed Rule describes water management broadly and ambiguously in a way that could be interpreted as "water management" equating to take of the species. We are also concerned that the lack of specificity is structured in a way that could be truly harmful to critical water management functions if utilized by litigious groups who have a track record in these matters. We need to ensure that the "threats" to the species identified in the rule are not teed up in a way so as to support what are essentially de facto "take" claims against water agencies and managers. That is precisely what happened with the Oregon spotted frog listing, where the final listing decision described the water storage/water management activities in the Deschutes River Basin as a threat to Oregon spotted frog, and then the listing decision was "Exhibit A" to the taking complaints filed by environmentalist litigants. For this reason, we request that the Service more clearly distinguish the threat to the species for listing purposes from what needs to be established to provide take.

The Proposed Rule also states that the designation of critical habitat for this species is not yet determinable and a critical habitat designation for the species will be proposed once the Service obtains the necessary economic information. Until the species range, listing determinations, and any associated critical habitat designation is proposed and finalized, it is very challenging to determine the exact scope and extent of impacts on water supply reliability, as well as the communities and ecosystems dependent on those managed water supplies. Given the broad range of the species in California, impacts on the foothill yellow-legged frog from water infrastructure as well as the operation of water infrastructure facilities will vary greatly and may have no impact at all. Additionally, our organizations oppose including man-made reservoirs and other constructed water conveyance infrastructure included in any critical habitat designation.

#### *Managed Livestock Grazing Can Benefit the Species*

Livestock grazing itself is not identified as a potential threat to survival of Foothill Yellow-legged Frogs; rather, the Proposed Rule suggests only that “overgrazing” and “inappropriate livestock grazing” may pose potential threats to the species. The threat to the species posed by overgrazing and inappropriate grazing may be overstated: Olson and Davis suggest that these threats may be “largely a historic threat” which has been adequately addressed via “riparian mitigations now in effect” (Olson and Davis 2009, p. 19). Scientific literature suggests that livestock grazing is negatively correlated with occurrence of the species and authorities do not identify any *causal* relation between the two, with one study noting that “the reason for this association is only conjecture at this time” (Olson and Davis 2009, p. 19) and another identifying at least one prominent counterexample of foothill yellow-legged frog populations flourishing in a heavily grazed environment (CDFW 2019b, p. 65). Per the available literature, it appears that livestock grazing presents little to no threat to foothill yellow-legged frog survival.

Even to the extent that overgrazing and inappropriate grazing *do* present threats to species survival, however, it should be noted that the likelihood of these threats occurring is minimal. The primary threat from overgrazing appears to be “overgrazing on riparian vegetation” (CDFW 2019b, p. 64), which can reduce riparian cover and increase erosion and sedimentation to the detriment of foothill yellow-legged frogs. It should be noted, however, that the risk of riparian overgrazing is minimal. On grazing allotments administered by the U.S. Forest Service, for instance, grazing permittees must manage grazing in accordance with the terms and conditions of their grazing permit and must maintain their allotment in accordance with Annual Operating Instructions. The Forest Service has specific standards and guides related to riparian utilization, forage utilization, and other factors specifically intended to prevent overutilization of natural resources (*i.e.*, overgrazing) and to avoid the consequences of such overutilization. Additionally, as suggested by Olson and Davis above, ranchers’ exclusion of cattle from riparian zones and other routine “riparian mitigations” utilized by ranchers for resource conservation are likely to mitigate this potential threat to the species on lands outside of federal management. The Final Rule should reflect that existing standards and guides and other routine management practices on US Forest Service allotments minimizes the potential of overgrazing, as does standard ranching practice outside of the USFS system.

Literature suggests that well-managed livestock grazing may *benefit* foothill yellow-legged frog habitat, for instance by controlling “riparian vegetation encroachment into important foothill yellow-legged frog breeding habitat” (CDFW 2019b, p. 64). For this reason, the Final Rule should reflect that ordinary, well-managed livestock grazing may be beneficial to conserving the species’ habitat and that, while overgrazing is a potential threat to the species, the likelihood of overgrazing and its attended effects is remote.

Finally, livestock grazing may serve to mitigate threats identified as negatively impacting foothill yellow-legged frog survival, such as wildfire. Research from the University of California Cooperative Extension finds that livestock

grazing significantly reduces the incidence, severity, and spread of wildfires.<sup>1</sup> Livestock grazing can reduce fine fuels on rangelands by an average of about 600 pounds per acre. That reduction of fuels reduces the likelihood of a fire igniting, and when fires do ignite on grazed rangelands, they are less severe, with flame lengths below four feet (which improves responders' ability to effectively suppress a fire and limits the spread of fire). Livestock grazing may also mitigate the threat that climate change poses to foothill yellow-legged frogs. Research is currently underway to quantify the greenhouse gas emissions savings attributable to grazing's reduction of fire-fuel loading, for instance, and productively grazing rangelands enhances the soil's ability to sequester carbon.

In sum, the Final Rule should more explicitly reflect that the threat of overgrazing is remote and that well-managed livestock grazing, such as the grazing done in accordance with USFS standards and guides, enhances foothill yellow-legged frog habitat and may reduce other threats to species survival such as wildfire and climate change.

### *Agricultural Crop Protection*

The Proposed Rule includes agricultural pesticide drift as a threat to the foothill yellow-legged frog. Pesticide use is controlled by federal, state, and local government agencies. The U.S. Environmental Protection Agency (U.S. EPA) sets minimum pesticide use standards and delegates pesticide enforcement regulatory authority to the states. California's pesticide laws and regulations, overseen by the California Department of Pesticide Regulation (DPR), are typically more rigorous and carried out by regulatory programs wider in scope than any other state. DPR and U.S. EPA coordinate in studying endangered species protection issues through an interagency agreement. DPR maps sites for listed or threatened species, evaluates pesticide exposure risks to inhabited sites, classifies risk, and develops protection and mitigation strategies, including prohibited use conditions. This coordination extends beyond the U.S. EPA to also include CDFW, the California Department of Food and Agriculture, and county agricultural commissioners.

With DPR's oversight and working collaboratively with biologists, county agricultural commissioners serve as the local enforcement agent for pesticide laws and regulations in all counties. Commissioners issue site- and time-specific permits required for restricted pesticides. Additionally, licensed applicators are also then required to incorporate training related to presence as a continuing education condition of their license. Upon submission of appropriate and valid studies on species impacts, DPR has, through the re-evaluation process, incorporated mitigations, tolerance revocations and registration cancellations where necessary.

As described above, pesticide registration, evaluation, and applications are thoroughly regulated in California greatly reducing threats to species and the occurrence of pesticide drift. As the Service continues to evaluate this proposed rule, we ask the Service recognize the importance of collaboration with U.S. EPA, USDA, individual registrants, and users of crop protection products. We believe it is critical to all interested parties that there be a manageable, efficient, and defensible process that shares information to maintain regulatory certainty and addresses issues of concern to species. Active engagement between the agencies, the Service, registrants and users will allow for a better outcome for species while recognizing the need for crop protection tool application by growers.

Finally, we must also emphasize that the Service must consider that trespass cannabis cultivation sites, not agriculture, are often associated with illegal, improper, and unregulated pesticide use.

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<sup>1</sup> Devii Rao, *Benefits of Cattle Grazing for Reducing Fire Fuels and Fire Hazard* (2020), available at <http://www.ucanr.org/blogs/blogcore/postdetail.cfm?postnum=43533>.

### *Impacts to County Government & the Importance of Coordination*

Local government is tasked with the responsibility of protecting the health, safety, and welfare of the people. As the Service works to prepare a Final Rule, we request that the Service consider that county governments are tasked with myriad responsibilities that are often impacted by decisions made pursuant to the Act. This includes, but is not limited to, road and infrastructure maintenance and preservation of public safety infrastructure such as flood conveyance systems. California's counties are also under strict mandates to increase affordable housing units in all areas of the state, which places extra pressure on local governments to plan and develop communities in areas where they otherwise might not desire to build due to habitat, wildfire risk, and other ecological issues.

Additionally, given this proposal could impact 25 counties if finalized as proposed, we would also ask that the Service undertake a robust local coordination process with counties to avoid conflicts and achieve consistency with local plans and policies. Robust coordination will help to ensure that the needs of local governments, and the communities impacted, are incorporated and that limited public resources are best utilized.

### *Climate Change and Wildfire*

Active land management, including the application of timber harvest and grazing, can provide tangible, beneficial support for the foothill yellow-legged frog and additional species in terms of addressing the threat of catastrophic wildfire and climate change. If managed correctly, forestlands with managed tree densities can act to reduce the threat of forests succumbing to drought and pest infestations. Additionally, removal of excess biomass through forest management activities and managed livestock grazing help diminish the risk of catastrophic wildfire. Catastrophic wildfire greatly impacts stream resources within and downstream of its perimeter, including foothill yellow-legged frog habitats.

We also believe that the land management strategies discussed in this paragraph and above to be consistent with the United States Department of Agriculture's announcement of *Confronting the Wildfire Crisis: A Strategy for Protecting Communities and Improving Resilience in America's Forests*, a 10-year strategy outlining the need to significantly increase fuels and forest health treatments to address the escalating crisis of wildfire danger threatening millions of acres and numerous communities across the United States.

## **CONCLUSION**

Our organizations appreciate the opportunity to provide comments in opposition to the Service's Proposed Rule to list four of six DPSs of the foothill yellow-legged frog in California. As stated above, we support the exclusion of the North Coast and North Sierra DPSs in the proposal. Our organizations also request that the Service consider further expanding the proposed 4(d) Rule. If questions about this letter, please contact Erin Huston, Federal Policy Consultant, California Farm Bureau at [ehuston@cbbf.com](mailto:ehuston@cbbf.com).

Sincerely,

Alameda County Farm Bureau  
Amador County Farm Bureau  
Association of California Water Agencies  
Butte County Farm Bureau  
Calaveras County Farm Bureau  
California Cattlemen's Association  
California Farm Bureau

Contra Costa County Farm Bureau  
Del Norte County Farm Bureau  
El Dorado County Farm Bureau  
Family Farm Alliance  
Fresno County Farm Bureau  
Glenn County Farm Bureau  
Humboldt County Farm Bureau  
Mendocino County Farm Bureau  
Monterey County Farm Bureau  
Nevada County Farm Bureau  
Plumas-Sierra County Farm Bureau  
Public Lands Council  
Rural County Representatives of California  
San Benito County Farm Bureau  
San Joaquin Farm Bureau  
San Luis County Farm Bureau  
Santa Barbara County Farm Bureau  
Shasta County Farm Bureau  
Siskiyou County Farm Bureau  
Solano County Farm Bureau  
Sonoma County Farm Bureau  
Stanislaus County Farm Bureau  
Stanislaus National Forest Grazing Permittees Association  
Tehama County Farm Bureau  
Trinity County Farm Bureau  
Tulare County Farm Bureau  
Tuolumne County Cattlemen's Association  
Tuolumne County Farm Bureau  
Farm Bureau of Ventura County  
Yolo County Farm Bureau  
Yuba-Sutter County Farm Bureau