

## **California Red-Legged Frog Loses 4,000,000 Protected Acres**

**Jane Kay / SF Chronicle 4jul02**

The federal government has rescinded its designation of nearly 4 million acres for the protection of the California red-legged frog after a legal challenge by home builders who said it would impede development in a vast region of Northern California.

The red-legged frog is the latest imperiled species to lose habitat protections in the past year, preceded by 19 species of West Coast salmon and steelhead and two imperiled birds -- a pygmy owl and the southwestern willow flycatcher.

In a legal agreement with the Home Builders Association of Northern California, the U.S. Fish and Wildlife Service agreed to nullify most of the 4.1 million acres it had designated last year as protected habitat for the threatened red-legged frog.

Under the settlement, signed Tuesday by Judge Richard Leon in the U.S. District Court in Washington, D.C., the wildlife agency agreed to redraw the boundaries by 2005.

The home builders group sued a year ago, arguing that the Fish and Wildlife Service didn't show that the vast area was essential for the frog's survival and charging that the agency's analysis of economic effect was inadequate.

"By including such a wide-ranging and enormous critical habitat designation, the service encompasses virtually every major home building project in the state into the very complicated Endangered Species Act process," said Tom Roth,

a San Francisco attorney who represents the home builders.

Much of the area designated as critical habitat for the frog is foothill and suburban land under heavy development pressure. The frog -- the star of a Mark Twain story about a frog-jumping competition in Calaveras County -- has disappeared from 70 percent of its original range in California.

Once land is deemed "critical habitat" under the federal Endangered Species Act, public agencies must consider whether development there might harm a protected species' environment. The regulations don't apply to private property owners unless they receive federal funds or permits.

Environmentalists who intervened in the red-legged frog case called the settlement a concerted effort by the Bush administration to dismantle the Endangered Species Act.

They also said they had been excluded from the settlement negotiations. Judge Leon, who was appointed to the bench three months ago by President Bush, signed the consent decree 10 days before the environmental groups faced a deadline to submit comments on the proposed settlement, they said.

"It's really bad news for the frog," said Michael Sherwood, an attorney at Earthjustice, the law firm representing the Sierra Club, the Jumping Frog Institute and others. The groups had wanted the designation to remain in place while the agency re-evaluated the designation.

"When Fish and Wildlife issued the original critical habitat designation, it cited the loss and alteration of the frog's habitat as the primary reason for its decline," Sherwood said. "It was important because there's such intense development pressure on the frog's remaining habitat."

In Washington, Interior Department officials said their decision to settle was influenced by a recent U.S. Court of Appeals ruling. It favored the New Mexico Cattle Growers Association's suit to strike down protections for the southwestern willow flycatcher. The decision found that the agency wasn't adequately considering economic impacts.

"The approach that the Fish and Wildlife Service is taking is that we are looking at a number of species to see if the economic analysis is adequate based on the 10th Circuit decision," said Interior Department spokesman Hugh Vickery.

"Fish and Wildlife agrees that a more robust economic analysis is required. The designation is going to be done. It just means it will be redone with a more stringent analysis," Vickery said.

This decision by Fish and Wildlife to backtrack on a former designation mirrors an April settlement where the agency agreed to reconsider millions of acres of protected habitat for 19 salmon and steelhead species in California, Oregon and Washington.

Federal courts have also ordered the agency to redo designations for the cactus ferruginous pygmy owl, California gnatcatcher and the San Diego fairy shrimp. There have been lawsuits filed against designations for the northern spotted owl, the marbled murrelet, the Alameda whipsnake, the western snowy plover and the arroyo toad.

"Industry is going after the critical habitat for dozens of species. It's one of the oldest tricks in

the books. The industry files, and the Bush administration agrees with the plaintiffs that the designations are deficient and gets rid of the protection rule," said Peter Galvin, a spokesman for the Center for Biological Diversity in Berkeley.

But Interior Department spokesman Vickery said the settlement did not reflect a difference between the Bush and Clinton administrations on endangered species policy. "This head-banging also went on with the environmental groups during the former administration," he said.

Because of a deluge of litigation by the groups, the agency was "forced to do all these designations under court order. It's actually harmful to endangered species because it takes resources from other activities that have higher priority such as listing new species," Vickery said.

The settlement keeps in place two areas -- 124,000 acres around Jordan Creek, a tributary to the Merced River in Tuolumne and Mariposa counties, and 75,000 acres in the Angeles National Forest near Los Angeles.

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