

Advocacy Advises FWS to Address Small Business Impacts in its Designation of Critical Habitat for the California Red-Legged Frog

On February 1, 2005, the Office of Advocacy (Advocacy) sent a letter to the U.S. Fish and Wildlife Service (FWS), in response to a notice it recently published, *Endangered and Threatened Wildlife and Plants; Revised Proposed Designation of Critical Habitat for the California Red-Legged Frog (Rana aurora draytonii)* (70 Fed. Reg. 66,906, Nov. 3, 2005). Advocacy recommended that FWS complete a regulatory flexibility analysis that would consider specific alternatives to minimize small business burdens. Also, Advocacy urged FWS to include the public in future rulemakings by publishing an analysis of how their rules will affect the public. A complete copy of Advocacy's letter to the FWS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The Endangered Species Act requires FWS to designate critical habitat for endangered and threatened species to provide those species extra protection. A user of land that falls within a critical habitat designation that requires a Federal clearance or permit for the use of that land must undergo vigorous review by FWS during a "consultation." FWS may require mitigation efforts by land users within critical habitat designations, or the agency may ultimately deny the permit and forbid the land use.
- Small home builders have informed Advocacy that they are likely to face significant burdens from the designation of critical habitat for the California red-legged frog. Builders in designated areas believe they will be forced to consult before building, a process which could add significant cost and delay to projects.
- Advocacy asked FWS to better consider small business costs and regulatory alternatives in a regulatory impact analysis. The agency's current economic impacts analysis seems to underestimate the number of small entities likely to be affected. Advocacy believes this rule should not be certified as not having a significant economic impact on a substantial number of small entities.
- Advocacy recommended that FWS give meaningful consideration to excluding high-cost areas from its final designation, such as San Luis Obispo, Contra Costa, Santa Barbara, Ventura, Alameda, Riverside, Los Angeles, and Monterey Counties.
- Advocacy commented that small business impact analysis conducted after a proposed rule is published harms the public's ability to comment on FWS' action. Advocacy urged FWS to consider economic impacts as part of proposed critical habitat designations as required by the Regulatory Flexibility Act.

For more information, visit Advocacy's Web page at: <http://www.sba.gov/advo>, or contact assistant chief counsel Michael See by email at michael.see@sba.gov or by phone at (202) 619-0312.