

Proposed Critical Habitat for the California Red-Legged Frog Poses Significant Costs for Small Farms

On May 26, the Office of Advocacy (Advocacy) filed comments with the U.S. Fish and Wildlife Service (FWS) regarding the impacts of proposed critical habitat for the California red-legged frog on small farms in the state of California. A complete copy of Advocacy's comments may be accessed at: www.sba.gov/advo.

- On September 16, 2008, FWS published a proposed revised designation of approximately 1.8 million acres of critical habitat and announced its intention to publish its economic analysis and IRFA for the proposed rule at a later date.¹ On April 28, 2009, FWS published its draft economic analysis and IRFA for public comment.²
- The Initial Regulatory Flexibility Analysis prepared by FWS identifies 499 small farms that will be significantly affected by the proposed CHD. The IRFA also concludes that 16,725 acres of farmland owned by small farming operations would be taken out of production if the CHD is finalized as proposed.
- FWS estimates that taking that farmland out of production would cost each of the 499 affected small farms between \$313,000 and \$338,000, with the total impact on small farms estimated between \$156 million and \$169 million.
- The Endangered Species Act (ESA) provides FWS with considerable discretion to consider economic impacts when making a final designation of critical habitat for an endangered species. Under Section 4(b)(2) of the ESA, the Secretary of the Interior may exclude any area of proposed critical habitat from a final CHD if he determines that the benefits of such an exclusion would outweigh the benefits of inclusion.³ FWS has used its discretion to exclude areas from critical habitat in many instances, particularly in light of significant impacts to small entities affected by critical habitat.
- To reduce the burden on small businesses, Advocacy recommended that FWS consider exercising its discretion under the ESA to exclude the 16,725 acres of small business-owned farmland that would be taken out of production as a result of this CHD.

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¹ 73 Fed. Reg. 53492 (September 16, 2008).

² *Supra* note 1.

³ 16 U.S.C. § 1533(b)(2).