2004 Year In Review:  
Legal and Policy Developments Affecting Amphibians in California & Nevada

I. Species-Specific Actions

A. California red-legged frog (*Rana aurora draytonii*)

1. Critical Habitat Designation: As the result of a successful lawsuit brought by Pacific Rivers Council (PRC), Center for Biological Diversity (CBD), Jumping Frog Research Institute, and Center for Sierra Nevada Conservation, the US Fish and Wildlife Service (USFWS) designated 4.1 million acres of critical habitat for the threatened California red-legged frog early in 2001, as required by the Endangered Species Act (ESA). A few months later, the Home Builders Association of Northern California and other development interests filed suit in Washington, D.C., to overturn the critical habitat designation. In November of 2002 Federal District Court Judge Richard Leon (DC Circuit) approved a settlement agreement between the Home Builders and USFWS (from which PRC et al. were excluded) that directed USFWS to redo its study of the designation’s economic impacts, and vacated all but 200,000 acres of currently unoccupied critical habitat protection. In April of 2004 USFWS issued a revised draft critical habitat designation (sans economic analysis) and opened a brief public comment period. The Service has indicated that it will reopen the comment period yet again when it issues the draft economic analysis, projected to happen in April 2005. A final designation is due in November of 2005.

2. Habitat Conservation Planning: In July 2004, USFWS opened a 60-day comment period on a Draft Environmental Impact Statement for a 40-acre residential development on UC Santa Cruz land (Ranchview Terrace) affecting the California red-legged frog. The HCP, if approved, would run for 60 years.

3. Habitat Protection: In June 2004, CBD and other conservation groups ended an ongoing legal challenge against the Blue Rock Country Club in Hayward, CA. CBD and the developer, Hayward 1900, entered into a mediated settlement allowing construction to begin on a new public school and other portions of the development while also acquiring and permanently protecting nearby habitat for the ESA-listed California red-legged frog and Alameda whipsnake, and opening new parklands in the East Bay hills to the public.

B. Mountain yellow-legged frog (*Rana muscosa*)

1. Habitat Conservation Planning: In June of 2004, USFWS approved the 1,300,000-acre Western Riverside Multiple Species HCP, covering 22 ESA-listed species and dozens of unlisted species. Affected amphibians include the Southern California Distinct Population Segment (DPS) of the mountain yellow-legged frog, coast range newt, and western spadefoot toad. The area involved contains many different habitats and a variety of land use types (e.g., commercial, mining, logging, etc.); the HCP will be in place for 75 years.

2. Endangered Species Act Listing Effort: Early in 2003, USFWS determined that the Sierra Nevada DPS of the mountain yellow-legged frog was “warranted but precluded” for listing under the ESA; it was placed on the candidate list and given a high priority for listing status. PRC and CBD challenged this finding in federal district court; the judge
ruled against compelling the listing in June 2004. In November 2004 an appeal was filed in the 9th Circuit Court of Appeals; the case is still pending.

C. Relict leopard frog (*Rana onca*)
1. **Endangered Species Act Listing Effort:** In May 2002, CBD and the Southern Utah Wilderness Alliance petitioned to list the relict leopard frog as endangered. The frog was placed on the candidate list with a listing determination deadline of June 14 2003. USFWS missed the deadline and CBD filed notice in February of 2004 that it intended to sue to compel listing; however, CBD held off filing suit pending development of a voluntary conservation program. Given the status of the program it is likely that CBD will file suit early in 2005.

D. Arroyo Southwestern Toad (*Bufo microscaphus californicus*)
1. **Habitat Conservation Planning:**
a. In November, 2004, USFWS approved a Multiple Habitat Conservation Program in Carlsbad, CA, covering the arroyo toad and 18 other ESA-listed species, as well as dozens of unlisted species. The HCP affects 24,570 acres of mixed-use lands (agricultural, commercial, residential, etc.) and will span 50 years.
   b. USFWS released a draft Coachella Valley Multi-Species HCP in November 2004; public comments are due on February 3, 2005. The plan will cover 11 ESA-listed species (including the desert slender salamander) over 1,206,578 acres of mixed use lands and will span 75 years.

E. Western Spadefoot Toad (*Scaphiopus hammondii*)
1. **Habitat Conservation Planning:** Western Riverside MSHCP issued 06/22/04 (see I.B.1 above).

F. California Tiger Salamander (*Abystoma californiense*)
1. **Endangered Species Act Listing/Relisting:** In July 2004, USFWS made three related decisions with regard to the California tiger salamander: (1) it listed the Central population of the California tiger salamander as threatened; (2) listed the species rangewide as threatened, changing the status of California tiger salamander populations in Santa Barbara and Sonoma counties from endangered to threatened; and (3) it adopted a special rule to work cooperatively with ranchers on whose lands the species is found.
   2. **Critical Habitat Designation:** November 2004, the Service designated 11,180 acres as critical habitat for the California tiger salamander in Santa Barbara County. The designation was made in response to a lawsuit filed by the Environmental Defense Center and CBD.

G. Desert Slender Salamander (*Batrachoseps aridus*)
1. **Habitat Conservation Planning:** Draft Coachella Valley Multi-Species HCP issued 11/05/04 (see I.D.1.b above).
H. Siskiyou Mountains Salamander (*Plethodon stormi*)

1. **Endangered Species Act Listing Effort:** In June 2004, coalition of groups led by CBD filed a petition requesting ESA protection of the Siskiyou Mountains salamander. The salamander formerly was protected under a provision of the Northwest Forest Plan called the “Survey and Manage” Program, which required the Forest Service and BLM to conduct surveys for the salamander and protect its habitat, but the Bush Administration eliminated the Program in March 2004.

I. Coast Range Newt (**Taricha torosa torosa**)

1. **Habitat Conservation Planning:** Western Riverside MSHCP issued 06/22/04 (see I.B.1 above).

II. **LEGISLATIVE DEVELOPMENTS**

A. **Congressional Bills Affecting Threatened and Endangered Amphibians**

1. **Critical Habitat Bill:** In the 2003-2004 Congressional session, Representatives Richard Pombo (R-CA) and Dennis Cardoza (D-CA) tried to push through a bill titled “Critical Habitat Re-form Act of 2003” (H.R. 2933). This bill would allow critical habitat to be designated not when a species is listed (as is the current requirement) but rather when a recovery plan is finalized, and the designation would be largely discretionary. One problem with this approach is that recovery plans rarely are developed for listed species, and those that are usually take years (if not decades) to come into being. On April 28, 2004, Rep. Pombo held a House Resources Committee hearing to discuss H.R. 2933. Rep. Cardoza spoke generally in support of the bill and in particular about “problematic” critical habitat designations for several listed species, including the California red-legged frog. About the frog he said, “If the species can be found all over 1.7 million acres…the species cannot by definition be considered endangered.” This bill, or some version of it, likely will be reintroduced in 2005.

2. **Sound Science Bill:** Also at play during the last Congressional session was a bill sponsored by Rep. Greg Walden (R-OR) titled “Sound Science for Endangered Species Act Planning Act of 2003” (H.R. 1662). This bill would (1) establish criteria for which scientific studies and economic data could be used to support listing decisions and in recovery planning, (2) require peer review by certain “qualified individuals” of listings and recovery plans, and (3) allow states and federal permitees (i.e., those seeking incidental take permits) a greater say than the general public in listing decisions and recovery planning efforts.

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Check out PRC’s amphibian conservation work at http://www.pacrivers.org