



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

August 31, 2009

Public Comments Processing
Attn: FWS-R2-ES-2009-0030
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Dr., Suite 222
Arlington, VA 22203

Dear Sir or Madam:

Following are the comments from the Wyoming Department of Agriculture (WDA) on the 90-day finding on a petition to list the western U.S. population of the northern leopard frog (NLF) as threatened under the Endangered Species Act (ESA) by the U.S. Fish and Wildlife Service (Service).

Our comments are specific to our mission within state government: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this proposal has major impacts upon our agriculture industry, our natural resources and the welfare of our citizens, we believe it is important you continue to inform us of proposed actions and decisions and provide us the opportunity to express pertinent issues and concerns.

The WDA would like to express our concern regarding the short timeframe for researching and commenting on the petition to list the NLF. Summer is a busy time of year for field staff and analysis and distribution of data is often a winter project. Therefore, we strongly urge the Service to extend the comment deadline an additional 60 days to accommodate the gathering of sufficient data in order to submit more comprehensive comments.

The WDA's comments specifically address agriculture's concerns regarding the five factors in the petition for listing: A) The present or threatened destruction, modification, or curtailment of habitat or range; B) Overutilization for commercial, recreational, scientific, or educational purposes; C) Disease or predation; D) The inadequacy of existing regulatory mechanisms; E) Other natural or manmade factors affecting its continued existence.

A. The present or threatened destruction, modification, or curtailment of habitat or range

We are strongly opposed to the petition to list the NLF as threatened or the possibility of the Service designating critical habitat. The Service is lacking substantial and adequate findings related to historical and current status and distribution of the NLF. We believe the Service is prematurely considering a threatened listing status of the NLF without providing field staff and biologists the

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opportunity to develop and organize comprehensive field monitoring studies, baseline data, trend data or simply record unplanned observations of NLF, which will quantitatively prove the population is not only stable, but viable.

We do not support the petitioner's proposal to list the NLF as a Distinct Population Segment. They believe the population is in such decline that all frogs west of the Mississippi will be extinct. We believe the development of baseline data and population counts will prove the NLF is thriving across the West, including Wyoming. Wyoming is just one western state where large intact private ranches and expansive areas of publicly owned lands protect wildlife populations and create and maintain wildlife habitat. The petitioner claims "*The best available science strongly indicates the species has declined by at least 38% given the level of wetland habitat loss in the state, although declines likely approach 85% given documented population losses (Baxter and Stone 1985).*"

The WDA contacted the Wyoming Game and Fish Department (WGFD) regarding historical range and current populations. We find it disturbing the petitioner seems to have historical statewide data, while the local WGFD does not. The petitioner goes so far as to claim the NLF is extirpated in 100 percent of the Greater Yellowstone Ecosystem, including Yellowstone and Grand Teton National Parks, which are the most pristine and intact areas in the lower 48 states. According to the petitioner, the NLF's demise is due to livestock grazing, agricultural land conversion, chemical use, pollution, habitat loss and degradation, none of which occur in national parks.

The U.S. Department of Interior, National Park Service website for Yellowstone indicates they have "*four species of amphibians, boreal toad, chorus frog, spotted frog, tiger salamander. Yellowstone is home for a small variety of amphibians. Glacial activity and current cool and dry conditions are likely responsible for their relatively low numbers in Yellowstone.*" Furthermore it states, "*the relatively undisturbed nature of the park and the baseline data may prove useful in testing hypotheses concerning the apparent declines of several species of toads and frogs in the western United States.*"¹ We then ask the Service, is the historical and current population data the petitioner provided scientifically valid? We strongly urge the Service to find the petition, not warranted.

The Service is also premature to even consider, critical habitat. In no way does the Service or any agency or organization, have the comprehensive data to express where the NLF can and cannot inhabit. The NLF is an opportunist. Over the past 100 plus years, agricultural producers have developed stock ponds and irrigation ditches, which the NLF capitalized upon and continues to inhabit today. We do not support the Service proposing these man-made developments as critical habitat. We also do not support private landowners' livelihoods being threatened by unwarranted claims or especially petitions for a species, which the WGFD expresses is very common and widely distributed across the state.

¹ <http://www.nps.gov/yell/naturescience/amphibians.htm>

B. Overutilization for commercial, recreational, scientific, or educational purposes

The WGFD permits any take of wildlife for commercial, recreational, scientific or educational purposes. The WDA contacted the WGFD regarding the number of frogs one permit holder could take and asked if there are large numbers of permits issued each year. The WGFD states *"since 1998, only 21 scientific collection permits involving the Northern Leopard Frog have been issued. These permits allowed for the collection of a combined total of 1220 frogs, and 13 egg masses. Of these frogs, 700 were required to be released at their point of capture."*² We believe this data proves commercial take in Wyoming is not considered an overutilization.

C. Disease or predation

Batrachochytrium dendrobatidis (Bd or Chytrid Fungus) is found in a number of amphibians in Wyoming. Despite the presence of Bd, no known populations of NLF are extirpated. Additionally, there are no known or effective treatments of Bd. Therefore we will not support the listing or protection of a species based on a naturally occurring disease, which biologists cannot currently treat. No regulatory mechanism will alleviate or cure this problem.

The petitioner states *"Nonnative, predacious fish, crayfish and bullfrogs are currently impacting watershed and riparian habitat across the west and likely are responsible for some declines of northern leopard frogs."* The NLF egg masses, tadpoles, juveniles and adults are likely a common prey for many predators, including native salamanders, aquatic insects and birds such as herons. We do not believe the petitioner will support the Service or WGFD in removing all predators of the NLF. Nor has the petitioner proven predation has caused extirpation of any NLF populations in any location.

D. The inadequacy of existing regulatory mechanisms

Wyoming Department of Environmental Quality (WDEQ) has diligently worked with oil and gas companies to ensure the authorization of discharge water from permitted wells is tested prior to the release of the water. In many locations, this water is beneficial to wildlife and agriculture. Discharge water is used in stock tanks, flood irrigation and development of stock ponds and wetlands. We believe WDEQ is adequately addressing water quality concerns and we support the Service's findings regarding WDEQ's efforts.

In addition, conservation districts across the state have diligently and voluntarily taken hundreds of samples in streams, creeks, ponds and lakes to address impairment issues. While these samples may not specifically address the NLF, clean water will undoubtedly benefit every water consumer, including humans, wildlife and livestock.

E. Other natural or manmade factors affecting its continued existence

The petitioner states the NLF is *"threatened with loss and degradation of habitat due to livestock grazing, agricultural development, urban development, oil and gas development, poor forestry practices, ground water pumping, mining, and invasive species."* The claim of livestock trampling individual frogs is offensive and an unlikely occurrence. The researcher has no scientific basis for this

² Wyoming Game and Fish Department Headquarters. Cheyenne, WY personal comment.

statement, but is simply providing their personal observation. We have to assume this researcher is not only unbiased, but can differentiate the tracks of cattle, elk, moose or bison, all of which are cloven hoofed animals and likely to use similar water sources.

Clearly, the petitioner is opposed to livestock grazing and fails to neutrally consider how wildlife or even humans could just as easily trample an individual frog. Specifically, moose frequent riparian areas and bull elk use small wetland areas as wallows. We have reviewed the Maxwell, B.A., research paper, which the petitioner references. The petitioner has strategically left out a number of important facts regarding livestock grazing, including, *"However, studies reporting the impacts of livestock grazing on amphibians are virtually nonexistent (pp. 15)."* Additional information the petitioner failed to include are: *In certain areas one possible impact may be that mechanical clearing of vegetation opens up basking areas that amphibians require (Bill Leonard, Washington State D.O.T., personal communication; Dick Tracy, University of Nevada at Reno, personal communication). In addition, in some areas livestock defecation and subsequent eutrophication of waters may benefit some amphibian larvae via a bottom-up control of the food web (Reaser 1996). Another possible positive impact of livestock grazing is the increased number of water bodies available to amphibians because of tanks and dams used for watering; assuming the hydroperiod is not long enough to allow exotic or native predators to become established (Scott 1996)"*(Maxwell 2000).³

The petitioner has also failed to credit how private land owners and the federal government is pouring millions of dollars into programs through the 1985, 1996, 2002 and 2008 Farm Bills, specifically, the Wetlands Reserve Program (WRP). WRP is *"a voluntary program offering landowners the opportunity to protect, restore, and enhance wetlands on their property. The USDA Natural Resources Conservation Service (NRCS) provides technical and financial support to help landowners with their wetland restoration efforts. The NRCS goal is to achieve the greatest wetland functions and values, along with optimum wildlife habitat, on every acre enrolled in the program. This program offers landowners an opportunity to establish long-term conservation and wildlife practices and protection."*⁴

Another program through the Farm Bill, Wildlife Habitat Incentive Program (WHIPP) *promotes the restoration of declining or important native fish and wildlife habitats, protects, restores, develops or enhances fish and wildlife habitat to benefit at-risk species, reduces the impacts of invasive species on fish and wildlife habitats; and protects, restores, develops or enhances declining or important aquatic wildlife species' habitats.*⁵

In addition to the Farm Bill, *"The North American Wetlands Conservation Act (Act, or NAWCA) of 1989 provides matching grants to organizations and individuals who have developed partnerships to carry out wetlands conservation projects in the United States, Canada, and Mexico for the benefit of wetlands-associated migratory birds and other wildlife."* Some of their accomplishments include:

³ Maxwell, B.A., 2000. Management of Montana's Amphibians. University of Montana, Wildlife Biology Program. Missoula, MT.

⁴ & ⁵ <http://www.nrcs.usda.gov/farmbill/index.html>

"From September 1990 through March 2009, more than 4,000 partners have been involved in 1,861 Standard and Small Grants Programs' projects combined. More than \$945.2 million in Act grants has leveraged some \$1.94 billion in matching funds and \$1.09 billion in nonmatching funds to affect approximately 24.8 million acres of wetlands and associated uplands across the continent."⁶

The Wyoming Water Development Commission's Small Water Project Program has completed an extensive number of projects across the state. The project costs as of February 2009 were nearly \$2.9 million. An additional \$1 million is being spent on current projects still to be completed. Some examples of projects include development of stock ponds, drilling of additional wells, spring developments and creation of wetlands. The goals of many of these projects is to disperse livestock more uniformly across pastures, while reducing grazing impacts to riparian habitat and wetlands. While the NLF is not specifically mentioned as the top beneficiary of these projects, they will undoubtedly capitalize upon these developments.

The petition claims pesticide use such as atrazine on agricultural lands is polluting groundwater and surface water. According to the Wyoming Weed and Pest districts, no known districts sold private landowners atrazine within the past ten years. Some districts have not sold atrazine since the late 70's. In states where atrazine has or is currently used, companies such as Syngenta are financially supporting research to reduce runoff. The article *How Practical Research Is Improving Water Quality: Syngenta Involved in Six Water-Quality Initiatives in the Midwest from Atrazine Assessment to Buffer Zones*⁷ explains how this particular company is researching reduction of chemical runoff through best management practices such as buffer zones. We strongly urge the Service to work closely with chemical companies to ensure all possible studies and research is included in making any status determination of wildlife and plants petitioned for listing.

The WDA works cooperatively with the Wyoming Ground-water and Pesticides Strategy Committee. The committee developed the Wyoming Generic State Management Plan for Pesticides and Ground Water with concurrence from the United States Environmental Protection Agency. *"The goal of the Wyoming Generic State Management Plan for Pesticides and Ground Water (SMP) is to manage the use of pesticides to prevent adverse effects on human health and the environment, and to protect the environmental integrity of Wyoming's ground-water resources."*⁸ In addition to the development of the SMP, the WDA is working with the United States Geological Survey (USGS) and WDEQ on monitoring ground water. Two hundred ninety six (296) ground water sites and wells have been sampled. The results are as follows:

- *All pesticide detections were below Wyoming Drinking Water Standards.*
- *Seventeen different focal pesticides have been detected. **Table 1** details the pesticide detections.*
- *Pesticides were detected in 174 of the 296 wells sampled (59%).*
- *Pesticides were detected in both urban and agricultural settings.*

⁶ <http://www.fws.gov/birdhabitat/Grants/NAWCA/index.shtm>

⁷ http://www.syngentacropprotectionus.com/Env_Stewardship/futuretopics/waterquality.pdf

⁸ <http://wy.water.usgs.gov/projects/pesticide/>

- *Most detections were trace quantities.*
- *The five most commonly detected pesticides are atrazine, picloram, prometon, simazine, and tebuthiuron⁹*

An additional study began in 2006, again in cooperation between WDA, USGS and WDEQ. Funding through EPA created a "one-year surface-water sampling project at two sites in the North Platte Basin and three sites in the Big Horn Basin. The purpose of the study was to determine the occurrence of pesticides in the basins and evaluate the seasonality of any pesticide detections."¹⁰ Current efforts include an application submission to sample additional surface waters on a statewide basis. Results of the application are pending. All of the mentioned efforts are completely voluntary, proving additional regulatory mechanisms are unnecessary to improve environmental conditions for humans and wildlife alike.

The petition identifies tamarisk and other nonindigenous aquatic and terrestrial plants as a threat to the NLF, because they form dense stands and exclude native amphibians while enhancing the survival of other introduced species like bullfrogs. The removal of these invasive plant species in Wyoming is regularly organized, managed, mapped and removed through a WDA sponsored program, Coordinated Resource Management (CRM).¹¹

CRMs are a volunteer problem-solving process to address natural resource issues developed by local landowners, local government, state and federal agencies and many non-profit organizations. Wyoming currently has nearly 70 CRM projects in various stages. Some of these CRM projects include the removal of tamarisk, Russian olive trees and other invasive plant species from Wyoming's watersheds. The removal of these plants is by a mixture of biological, mechanical and chemical control methods. All of which are completed by certified applicators, biologists and trained natural resource staff. In addition to removing invasive plants, local individuals will continue to monitor their efforts and reclaim the watersheds with native plants, including willows, forbes, sedges and grasses. These native plants stabilize the stream banks and provide additional habitat and forage for wildlife, including the NLF.

The petitioner describes the NLFs demise or extirpation by timber harvesting activities; specifically road building, increased sedimentation from erosion, reduced corridors and increased temperatures. Forests have been cut multiple times for harvest of timber and the frog continues to flourish. Petitions such as this, where the listing of a species reduces or eliminates logging is the leading cause why the national forests throughout the Rocky Mountains are so dense and dying from mountain pine bark beetles. Wyoming State Forestry Division and WDEQ have created the publication *Wyoming Forestry Best Management Practices: Forestry BMP's, Water Quality Protection Guidelines*.¹² The publication specifically addresses road construction to reduce sedimentation, placement of culverts, reduction of sediments into water bodies and how to handle and clean up hazardous

⁹ <http://wy.water.usgs.gov/projects/pesticide/index.htm>

¹⁰ <http://wy.water.usgs.gov/projects/pesticide/sw/index.htm>

¹¹ Wyoming Coordinated Resource Management, Wyoming Department of Agriculture

¹² <http://slf-web.state.wy.us/forestry/bmp.aspx>

substances. While the Best Management Practices are voluntary, the publication is widely distributed and accepted. We strongly support well managed forests to prevent massive die offs and wildfires.

We believe the petitioner's request to list the NLF as threatened is unwarranted, is lacking scientific data and are confident the Service will rule in opposition of the listing. The private landowners across the West continue to manage their lands for multiple-use, including wildlife. We will not support additional regulatory restrictions placed on private lands or public grazing allotments.

The WDA thanks the Service for receiving our comments. We look forward to reviewing the final rules and to the implementation of these programs onto the farm and ranchlands across Wyoming.

Sincerely,



Jason Fearneyhough
Director

JF/jw

Cc: Governor's Planning Office
WDA Board of Agriculture
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Rocky Mountain Farmers Union
Wyoming Association of Conservation Districts
Wyoming Farm Bureau Federation
Wyoming State Grazing Board
Wyoming Game and Fish Department
Wyoming NRCS State Office
Wyoming Ag Business Association