



## Central Coast Forest Association

### CALIFORNIA RED-LEGGED FROG REGULATION UPDATE

By Jim Hildreth, CCFA President

As reported in the spring 2008 issue of *The Log*, new developments in the regulatory arena resulted in more restrictive measures for the protection of the California Red-legged Frog and the San Francisco Garter Snake. The US Fish & Wildlife Service (FWS) had been providing technical assistance to avoid take of these listed species, and this usually resulted in somewhat reasonable site specific protection measures. Now, due to budgetary constraints, FWS will not be providing technical assistance. Instead, FWS now requires that strict take avoidance measures be included in all timber harvest plans. The California Department of Forestry (CDF) is responsible for insuring that all timber harvest plans comply with these new regulations.

According to the FWS Recovery Plan for the California Red-legged Frog, all of the Santa Cruz Mountains (and much of the state) is within the current range of the frog. CDF recommended three ways of addressing take avoidance for timber operations that will occur within the current range.

The first is to adhere to the FWS California Red-legged Frog Take Avoidance Scenarios (March 25, 2008). This is not a reasonable option as it severely restricts harvest operations near dry or wet watercourses. For Class I watercourses and permanent ponds/wetlands, timber harvesting and equipment use is not allowed within 300 feet of the watercourse. For Class II watercourses and intermittent ponds/wetlands, if water is present, a 300 foot no-cut buffer is required; if dry, a 30 foot no-cut buffer is required. No equipment is allowed within 75 feet of the watercourse. For Class III watercourses a 30 foot no-cut buffer is required when the stream is dry.

The second is to develop a site-specific method of take avoidance. This alternative requires a qualified biological opinion substantiating why, based on site specific conditions, the proposed protection measures and seasonal restrictions should avoid harm and harassment of the frog. CDF requires that the biological opinion be provided by a person with sufficient knowledge about the life history and habitat requirements of the frog. However, the California Department of Fish and Game requires that this person be a wildlife biologist with appropriate background.

The third way of addressing take avoidance for timber operations is to request technical assistance from the FWS. This request must be made through CDF and they will contact FWS on behalf of the plan submitter. This method will cause additional plan review time and FWS may not be able to provide technical assistance in many cases.

So which of the three recommendations is best? The first option is not reasonable as it automatically requires that the maximum and most expensive restrictions be placed upon timber operations. This should be only be implemented where the agen-

cies have given the landowner no other choice. The second option requires the hiring of a wildlife biologist for all timber harvest plans. The survey protocol requires that eight site inspections be conducted, so this is expensive and time consuming. The third option may be attempted, but even in the unlikely event that the FWS provides assistance, long delays in plan approval will occur. There is no reasonable option, but hiring a biologist may be the least restrictive. Most timber harvest plans have limited suitable habitat, and the biologist should be able to make site specific recommendations that will allow the landowners to harvest their timber while avoiding take of the Red-legged Frog. As usual, these strict regulations will cost landowners money. And since the presence of the Red-legged Frog is uncommon, these expensive regulations now required for all timber harvest operations will often result in providing protection to a listed species that is not even present at the proposed timber harvest site. ■

### CHOICES, CHANGES, AND CONSEQUENCES

By Cate Moore, Director

Just as the U.S. Fish and Wildlife Service is in the process of expanding critical habitat designations for the Red-legged Frog, it comes out that one of the biggest threats to the frog is also one of our biggest tools in the fight against mosquito-borne diseases, the Mosquito-fish.

This conjunction of the good and bad consequences of a noble endeavor made it seem like a good time for us all to contemplate the nature of choices.

We spend our lives making choices, from the most trivial choices like what to eat for breakfast to far-reaching choices of national policy. Each of these choices leads to changes, and changes have consequences. A disturbing fact about change is that only the most trivial of changes causes only one consequence. We find that most of the choices in our lives make a whole ripple of changes that spread out into the far reaches of our influence and that these changes are not simply good or bad. Most choices of consequence contain baggage that cause benefit and harm at the same time. Even the choice to "do nothing" has consequences. Just because you choose to stand still, it does not necessarily follow that the rest of the world will also stop; trees continue to grow and water continues to flow.

The multitudinous effects of choices can be seen most clearly when the environment is involved. Let us go back to the case of the mosquito-borne diseases, Mosquito-fish and Red-legged Frogs.

People, horses and several species of birds benefit from the suppression of West Nile Virus via mosquito control, no matter how it is done. On the other hand, the reduction of the mosquito population plays havoc with the food chains of several other species, including dragonflies, bats, native fish and several species of insect-eating birds like swallows and flycatchers. Depending on the method by which the mosquitoes are suppressed, we have

**See Choices, Changes & Consequences** (Continued on page 4)

## GOING, GOING, GONE

By Traci Hukill, condensed from Metro Santa Cruz  
With Editorial comment by Barbara McCrary

Jonathan Ambrose, a Santa Rosa-based biologist with the Nation Marine Fisheries Service (NMFS) says Coho have evolved to be able to survive catastrophes like landslides, wild-fires and even a spate of poor ocean condition years. But that only works if their habitat is healthy.

But what we're realizing is, the instream condition across the range of the Central California Coho are in poor shape. Even if the fish make it back from the ocean, if the instream conditions aren't there, the fish can't do what they've evolved to do, and that's (to) quickly recolonize.

**Editor: Interestingly enough, we were told by fish biologists, not too long ago, that Scotts Creek was in great condition - an ideal Coho habitat.**

Scientists point to a variety of factors in the destruction of Coho habitat. The main one, in Ambrose's view, is urbanization. As an example, he offers up the San Lorenzo River, which had Coho until 1982 (and a few again in 2005.)

"The San Lorenzo comes up as probably *the* watershed in the overall worst condition," he says. "And why is that? Because you have an incredibly high density of roads. Lots are not properly maintained. Dirt bleeds into the creek. All kinds of people are living on the river, because - what a beautiful place."

**Editor: Is it any wonder that the San Lorenzo River has poor conditions? Perhaps the numbers of roads has influence, but has anyone considered the number of septic tanks that leach into the river? Or the amount of oil residue that washes off the paved roads and flows into the river?**

"But what happens is, this fish needs to have complex instream habitat, and in Santa Cruz County that's primarily formed by trees falling into the creek, creating deep pools. But in Santa Cruz, the county funds the removal of large woody debris in the stream - and no other county does this - and if you don't have large woody debris in the water, you won't have fish."

**Editor: At one time, before the 1970s and 1980s, there were steelhead trout and Coho salmon, albeit planted ones, in the creeks of the Scotts Creek watershed. On Big Creek, for example, there has been no disturbance since the 1948 fire, with the exception of the 1955, 1982, and 1997 floods. No logging, no further fires, no new roads, and no woody debris removal... The forest cover is so dense that almost no light gets in. Browsing animals do not live there and there are few insects for the fish to eat. The stream has been closed to fishing for well over 25 years. So why are there no fish? We do see fingerlings, in the sunny areas, but no mature fish in this stream that used to yield enough fish to feed families. My theory is that the streams are *too* dark. A lifetime's experience by several locals, and nearly 60 years of my own, shows the fish liking pools with sunlight and ledges of rock or the occasional log to hide under. They don't like the completely dark habitat that has developed since the lack of fires and cessation of logging. Furthermore, the overpopulation of trees take up a vast amount of water, lowering the creek level and contributing to a reduced habitat for the fish.**

As for sediment destroying fish habitat, one local remembers the feeding frenzy amongst the fish when the Big Creek powerhouse used to discharge water into the creek. The water activity stirred up their food source, gravel and sediment.

Then there's the erosion and other problems associated with logging. Much of the Coho's habitat lies in timberlands, and the NMFS has come out and charged that the California Board of Forestry's (BOF) policies have contributed to Coho decline - which is why the Sierra Club and other litigants sued the BOF this past summer.

**Editor: The excessive and persistent rain of 1997-98 caused massive landslides on Big Creek, where there has been no logging in over 60 years. Erosion is not caused exclusively by logging, but primarily by too much rain runoff for the soil to absorb.**

The board actually has new rules to protect the Coho. With buy-in from the Department of Fish and Game, it revamped its policy on the Coho in July 2007. The new rules govern such arcana as what percentage of conifer canopy must be left in place on tributaries to Coho-bearing stream when the slope is greater than 55 percent., and how many feet before a culvert a road must be laid with rock to slow erosion.

Sierra Club deputy director Paul Mason says the devastating 2008 Coho return proves that the board's new rules don't work.

**Editor: A largely contributing factor was the lack of early rains to open the streams to the sea. Salmon waiting to gain access to the streams were picked off by assorted predators, including seals, pelicans, and seagulls. Another suspect in diminishing salmon population is overfishing in the ocean.**

The main problem is that those rules - tougher than the previous policies but not as restrictive as many environmentalists would have liked - only kick in when a Fish and Game official determines that a given logging plan would harm Coho. The Sierra Club and its fellow litigants want to remove the trigger and have the rules enacted at all time.

"Basically they only want to apply these protections if Fish and Game can prove that salmon are going to die before a logging operation," Mason says. "And we think they should apply before you're actually killing the last salmon."

As for the scientific literature review being undertaken by the board, Mason is dismissive. "They won't make any changes based on that review for well over a year, minimum. Those rule changes would go into effect at the earliest in 2010.

"And that has been the counter-argument: We're doing this literature review; let's let the process run its course. Our response to that is: the salmon are in freaking crisis. There's no reason we can't adopt more protective measure while finishing the review."

Mason finds an irony in the fact that NMFS - an agency in the (federal) government, after all - has sided with the Sierra Club on the matter of the inadequacy of the state board's rules.

"This is perhaps the only situation I can think of where the (federal) administration is taking a more protective stance than the (state) administration," he says. "It's kinda crazy that way."

And who prevails when the federal government tells a state agency to clean up its act? No telling. Several years ago, the NMFS sued the Board of Forestry, saying its rules contribute to the "take" of salmon. The state fought it in court and it was thrown out on a technicality. Essentially, the board said, "Kiss off," says Mason. ■

**The McCrary family and their forbears have lived on Big Creek since 1869 and have first-hand experience with both forests and the native wildlife. Family journals allow them opportunity for comparison of the area over a 110-year span.**

## WATER QUALITY BOARD PROVIDES RELIEF

By Gary Paul, Director

Due to the efforts of Big Creek Lumber's forestry staff, the local forestry community was finally provided relief from the long and costly waits for approval of Requests for Enrollment under the General Waiver of Waste Discharge Requirements for Timber Harvest Activities by the Central Coast Regional Water Quality Board. On September 18, the Board issued modifications to this process.

Under the new policy, the request for enrollment is tentatively approved 14 calendar days after the Board receives a complete application for coverage. In the interim between tentative approval and the official enrollment, the Tier III monitoring and reporting program must be followed. This includes dry season temperature monitoring and storm-event triggered turbidity monitoring.

If the application is determined to come under Tier IV monitoring, requiring an Individual Waiver with a hearing before the Board, the applicant is required to stop timber harvesting until the hearing. Alternatively, the applicant could modify the operation. The Board did not specify what those modifications might be.

In any event, this is a great improvement over the previous process, and will benefit the vast majority of harvest operations. ■

## RED-LEGGED FROGS - ANOTHER PERSPECTIVE

By Cate Moore

The September 24, 2008 issue of Ag Alert had an article advising farmers and ranchers that the U.S. Fish and Wildlife Service was planning to quadruple the area designated as critical habitat to the Red-legged Frog. Just a week later, both the Santa Cruz Sentinel and the San Jose Mercury News printed an article identifying mosquito-fish, a popular and effective mosquito abatement tool, as a serious threat to the survival of local amphibians, including Red-legged Frogs and Santa Cruz Long-toed Salamanders, both of which are protected species.

The Fish and Wildlife Service has documented that designating land as critical habitat does little to benefit a protected species, yet this appears to be their only answer to declining frog populations. As far as I can tell, about all this designation does is put a paperwork burden on the landowners of property in the designated areas. It can even be detrimental to providing habitat improvements; those of you who choose to seek federal dollars for conservation programs funded by the federal farm bill will see delays in the processing of the projects for "consultation" requirements imposed by critical-habitat designations.

Meanwhile, another branch of the government, the local disease vector control departments, will continue to provide mosquito-fish to residents for use in the backyard ponds and stock ponds. Mosquito-fish, while they are incredibly efficient at consuming mosquito larvae, do not limit their appetite to insects. They are just as happy eating tadpoles, and their presence spells doom for frog populations using their ponds as breeding areas.

The vector control agencies do their best to ensure that mosquito-fish are not introduced into wild streams or ponds, but once they are introduced into an area, all it takes is winter flooding or human carelessness to spread the fish into native ponds. On top of this, as the native breeding ponds are removed by urbanization, the frogs are moving into stock ponds to find breeding

grounds and are thus meeting the mosquito-fish in increasing numbers.

Just designating an area as critical habitat is not effective, and the U.S. Fish and wildlife Service needs to know this. The proposed rules are currently undergoing a public comment period which will close on November 17, 2008. A copy of the proposed rules, including maps, can be found at [www.fws.gov/sacramento](http://www.fws.gov/sacramento). Following the red-legged frog links (there are more than one) will get you to the text of the proposed rule, some questions and answers, and links for providing feedback. If you want to request a public hearing on the subject, written requests need to be received by October 31, 2008. In your comments, be sure to let them know that on-the-ground solutions like building breeding ponds will be far more effective than more paperwork; and don't forget to ask them how they plan to handle mosquito-fish. ■

## LOS GATOS LOGGING PLAN NIXED

By Ken McLaughlin  
Media News

Reprinted from Santa Cruz Sentinel, October 9, 2008

San Jose Water Company's plan to log more than 1,000 acres of redwood and Douglas fir trees near Highway 17 came to an abrupt end Wednesday when the state Board of Forestry voted unanimously to side with mountain residents who had fiercely fought the proposal.

In a surprise announcement shortly after the nine-member board made its decision, a representative of San Jose Water indicated that the company would not appeal the decision in court. "I believe this is it," said John Tang, spokesman for the water company. "We're very disappointed."

Residents of Chemeketa Park and other nearby communities, who have battled the logging plan since 2005, reacted with joy and said they were shocked that water company was backing down.

Opponents had vowed to sue if the forestry board approved the plan, arguing that the logging would generate noise, trigger landslides and increase fire danger. San Jose Water had said it wanted to log the 1,002 acres to create revenue and reduce the risk of fire.

Fire risk, however, was not the central point of contention before the forestry board on Wednesday. At issue was how much timberland is actually owned by the investor-owned company, which provides drinking water to about a million people in San Jose, Los Gatos, Saratoga, Cupertino and Campbell.

After a three-and-a-half hour hearing at which about two dozen people spoke, the forestry board agreed with the state Department of Forestry and Fire Protection (also called Cal Fire) that the company owns more than 2,500 acres of timberland. So, it ruled, the company does not qualify for the "open-ended" logging permit it was seeking; permits for owners who exceed the 2,500-acre threshold pose significantly steeper hurdles.

Cal Fire and the forestry board say the company actually owns 2,825 acres of timberland, while the company says only 1,921 acres of that actually bears commercially harvestable trees.

The forestry department's chief counsel has argued that "timberland" includes not only areas with big trees but also lands with soils capable of growing trees.

San Jose Water and Big Creek Lumber, the Santa Cruz County contractor working with the water company, characterized that definition as unfairly broad. ■

### Choices, Changes & Consequences *(Continued from page 1)*

even more benefit/harm factors. Pesticide spraying leaves residues that get into the waterways and the food chains. Draining standing water eliminates habitat, especially for amphibians. Mosquito-fish may eat up to 500 mosquito larvae per day, but they don't stop there. They will eat anything that is not eating them, including tadpoles of endangered amphibians, and this adds a voracious exotic predator to the environment. Doing nothing about mosquitoes allows the diseases to run rampant, killing birds, horses and some people.

So...what to do? The ugly fact of life is that you can't have everything. We earnestly wish to "do no harm." Unfortunately, it simply is not possible. You have to make your choices and accept the consequences. ■

## FALLOUT FROM SJWC'S TIMBER HARVEST PERMIT FAILURE

### CCFA Board Editorial

On October 8, the board of Forestry heard an appeal by San Jose Water Company (SJWC) based on the Cal Fire (nee California Dept. of Forestry - CDF) denial of the water company's Non-industrial Timber Management Plan (NTMP). Cal Fire denied the NTMP based on a determination that SJWC owned more than 2,500 acres of timberland, the maximum acres allowed for an NTMP under state law.

The land in question is located on the east side of Highway 17 in Santa Clara County, next to Lexington reservoir.

But SJWC's forester, Big Creek Lumber (BCL), had already determined that the water company's timberland ownership was less than 2,000 acres. How could Cal Fire and Big Creek's analysis be so far apart?

This is an interesting question. BCL foresters spent far more time analyzing the acreage than Cal Fire did. They did a lot of ground truthing on the property, while Cal Fire spent little time on the ground. Instead, Cal Fire relied on helicopter flyovers, a methodology that is rarely used, because it is nearly impossible to determine property boundaries from the air. Most disturbing to the CCFA Board is the fact that BCL met with Cal Fire reps in order to find out how Cal Fire wanted BCL to determine which acres constituted timberland. Big Creek followed these instructions. Incomprehensibly, after providing Big Creek with their instructions, Cal Fire proceeded to use a completely different methodology. They did so without notifying either Big Creek or SJWC.

Perhaps an examination of the politics of the situation will shed more light. The NTMP is adjacent to several densely populated subdivisions. Some of the neighbors in these subdivisions aligned themselves with a handful of well-known anti-logging extremist from Santa Cruz County. They decided to turn the NTMP into a "cause" and proceeded to attack the project from every angle.

Letters of opposition and insinuations of legal action poured into Cal Fire. You might ask yourselves what difference such opposition would make? After all, the process of obtaining a timber harvest permit is outlined in state law. If a landowner meets the minimum requirements, the permit must be granted. There is no legal consideration granted to opposition for its own sake.

But this rationale overlooks the fact that Cal Fire has publicly stated that their number one objective is to keep their

agency out of court. Given this directive, one can understand why Cal Fire denied the NTMP.

To add insult to injury, the Board of Forestry denied SJWC's appeal, thereby upholding Cal Fire's determination. Astoundingly, the Board had to ignore its own statutory definitions of "timberland" and "crop of trees" in order to reach this conclusion.

One can only wonder whether the Board of Forestry has abandoned its stated mission of supporting and maintaining a viable forest products industry in California and instead is adopting Cal Fire's self-serving "don't sue us and we'll do anything you want" mentality.

Heaven help the forest landowners of California if this is true. ■

## DIESEL REGULATIONS UPDATE

By Eric Moore, Director

The California Air Resources Board continues to shift and squirm as they try to avoid acknowledging an inconvenient truth, namely that the regulations they are proposing are economically unsustainable. Instead, they are building an increasingly complicated list of exclusions and special schedules for compliance, based on whether you own farm equipment or trucks or school buses, the size of your fleet, etc., etc., etc. Eventually, though, everyone will either need to replace their vehicles, their vehicles' engines, add on after-market emissions control devices or sell the vehicle out of state.

What the Air Resources Board does not seem to understand is how costly any of the above measures are to California's businesses, and ultimately to the state as a whole. Diesel engines are constructed to provide two million miles of service before replacement. Yes, that is two million! While a big interstate hauler will go through those miles in four or five years, most vehicles can expect thirty years of service, and most of the people using them have that duration in their business planning. It will cut many of them off at the knees to have to replace a big expensive vehicle before its time. To make the blow even worse, there are no engines currently available that meet the 2012 standard. This means those that re-powered recently to meet 2004 standards will have to do it again, for an even more unsustainable double whammy.

The implications of so many businesses being heavily stressed in these times is truly frightening. Businesses are already leaving California in droves. Those that cannot are the ones that provide vital on-the-ground services and many of these services involve the use of diesel equipment. How are we going to maintain our infrastructure, do construction, or grow our crops if the businesses cannot afford the equipment? How is California going to sustain its economy when a wave of businesses throw up their hands and quit or leave the state, laying off all of their people? How does the state think it is going to fund its projects when business taxes, income taxes, and transportation taxes all take a simultaneous hit?

The sad part is that it would take only one change to make the whole thing work: make the regulations apply only to new vehicles and let the rest die their natural deaths of old age and infirmity. The Air Resources Control Board will not make this change without pressure. We urge you to contact your legislators and the governor and ask them to put some sanity back into the proceedings. ■

Central Coast Forest Association  
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# Notes From the Nut-House

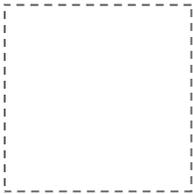
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## PARDON MY PLANET | Vic Lee



We're on the web!  
www.ccfassociation.org



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**IMPORTANT NOTICE: HELP US COMMUNICATE!**

Occasionally we need to rally the membership to respond to abrupt government actions. We must be able to contact you in a hurry in such circumstances. Please submit your current e-mail address to us via our website, [www.ccfassociation.org](http://www.ccfassociation.org) or by e-mail to: [ccfa@ccfassociation.org](mailto:ccfa@ccfassociation.org). We will keep it strictly confidential at all times.

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The forests must be, and will be, not only preserved but used, and the experience of all civilized countries that have faced and solved the question show that the forests, like perennial fountains, may be made to yield a sure harvest of timber while at the same time all their far-reaching beneficent uses may be maintained unimpaired.

*John Muir*

*Founder of the Sierra Club in 1895*

**CCFA's Mission**

*The Central Coast Forest Association is a non-profit alliance of small forestland owners, forestry professionals and forest-oriented businesses with close affinity to the woods, mountains, streams and wildlife of the Central Coast. Our purpose is to uphold and preserve our values, our property rights and our way of life. To advance this objective, CCFA will:*

- *Interact with community, political and environmental interests as a voice for forestland owners.*
- *Understand the news, law and technology of forestry and apply this knowledge for the benefit and protection of forestland owners.*
- *Inform members of matters affecting their lands and forests.*
- *Take political and legal action to defend the rights and property of all Central Coast forestland owners.*