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In Reply Refer to:
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Sent-Electronically

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Subject: Appendage of the 2024 Annual Bald Base Camp Poker Run OHV Events to the
2023 U.S. Forest Service Programmatic Biological Opinion for the Four Sierra
Nevada Amphibians (2022-0041012-S7-001)

Dear Dean Gould:

This letter is in response to the Sierra National Forest's (Forest Service) request to consult on the proposed 2024 Annual Bald Base Camp Poker Run OHV Events (Events) in Fresno County, California. Your request was received by the Service on April 24, 2024. The Forest Service has determined that the Events may affect, and are likely to adversely affect the threatened Yosemite toad (*Anaxyrus canorus*, toad). The Forest Service is requesting concurrence that the proposed Events may affect, but is not likely to adversely affect designated critical habitat for the Yosemite toad. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The Forest Service has requested that the Service append the proposed Events to the September 27, 2023, *Amendment of the Programmatic Biological Opinion on Nine Forest Programs on Nine National Forests in the Sierra Nevada of California for the Endangered Sierra Nevada Yellow-legged Frog, Endangered Northern Distinct Population Segment of the Mountain Yellow-legged Frog, Threatened Yosemite Toad, and Threatened North Feather Distinct Population Segment and Endangered South Sierra Distinct Population Segment of the Foothill Yellow-legged Frog* (2023 Programmatic Biological Opinion; 2022-0041012-S7-001).

In considering your request, we based our evaluation on the following: (1) the 2023 Programmatic Biological Opinion; (2) the Forest Service's April 24, 2024 letter requesting initiation of formal consultation on the proposed Event; (3) the Forest Service's *Aquatic Species Biological Assessment for the Sierra National Forest 2024 OHV Events*, dated April 2024 (Biological Assessment); and (4) other information available to the Service.

Designated Critical Habitat for Yosemite Toad

The Forest Service proposes one Special Use Permit (SUP) for the Events. The proposed Events include three OHV events that will be covered under one Forest Service SUP: the Moonlight Madness, Head for the Hills, and High Sierra Poker Run.

The action area consists of 204.2 acres; of which 122.9 acres fall within Unit 14 (Kaiser/Dusy) of toad critical habitat. The Events utilize existing trails and roads, and no cross-country or off route travel will be permitted. The acreage within Primary Constituent Element (PCE) 1 (aquatic breeding habitat) is not expected to be impacted due to the proposed conservation measures that will avoid impacts on aquatic habitat. The aquatic habitat consists of stream crossings from trails and roads, which have existing culverts to convey water and are maintained for proper flow and function. Because no cross-country or off-route travel will occur during the proposed Events, vehicles will not be entering aquatic habitat and will remain on the course for each Event on existing trails and roads. As such, the impacts as a result of the Events are not expected to negatively alter aquatic breeding habitat, and this habitat will still be available to sustain toad populations.

Most Event participants will camp at the existing Bald Mountain Base Camp, with some participants disperse camping alongside existing roads. Dispersed campers will be required to follow the Forest Service's dispersed camping regulations, and dispersed camping will be prohibited in occupied toad habitat. Because of this, impacts due to dispersed camping are not expected to alter upland habitat (PCE 2) to a degree where it no longer provides elements that are essential to the conservation for the species. Additionally, while vehicles will use existing roads, pull outs outside the roadbed may be used to allow others to pass. This action may result in instances where ground cover and refugia for toads are temporarily damaged. For example, vegetative cover may be crushed, or burrows may be collapsed. However, these instances are expected to be temporary (i.e., vegetation will grow back, and burrows will be repaired or replaced by small mammals). In addition, these isolated occurrences will only impact a small amount of vegetation and burrows relative to what is available in the immediate area and within the critical habitat sub-unit as a whole. To reduce the potential for impacts on upland habitat, proposed Event activities will avoid open dry areas in occupied habitat where numerous rodent burrows and lupine are observed, including turn-around locations and areas for vehicle parking. Educational materials will also be distributed to participants in order to increase public awareness on toad presence. Due to the proposed Events use of existing roads and trails, the low acreage amount of upland critical habitat components (e.g., burrows and other cover habitat along the sides of the roads) temporarily impacted by the proposed Events, and additional project specific conservation measures, effects to toad critical habitat are expected to be discountable.

The remainder of this document provides our biological opinion on the effects of the Events on the toad.

APPENDAGE TO THE PROGRAMMATIC BIOLOGICAL OPINION**Consultation History**

April 24, 2024: The Service received the request for consultation along with the Biological Assessment from the Forest Service for the Events on the toad.

The Service has determined, based on the Biological Assessment provided by the Forest Service, that the proposed Events are consistent with the action descriptions and effects analysis of the 2023 Programmatic Biological Opinion and thus, it is appropriate to append the proposed Events to the 2023 Programmatic Biological Opinion. This letter represents the Service's biological opinion on the effects of the proposed Events on the Yosemite toad and its designated critical habitat.

Description of the Proposed Action

The Events addressed in this biological opinion falls under the SUP program. More detailed descriptions of the action are provided in the Biological Assessment provided for the proposed Events. Refer to pages 7-10 of the Biological Assessment for a detailed project description.

Conservation Measures

The Forest Service proposes to implement all applicable Regional and National Best Management Practices (BMPs) and Forest Plan components, including Standards and Guidelines (S&Gs). These are referred to collectively as "conservation measures" in this appendage letter. The proposed Events also include the following project-specific design criteria to minimize potential effects to the toad.

Monitoring:

1. Pre- and post- Event monitoring by High Sierra Ranger District aquatic technicians or the district aquatic biologist will occur on the 9S09 and 9S02 roads to record toad individuals injured or killed along the Event routes.
2. During day events, aquatic technicians will monitor the 9S09 and 9S02 roads and move toads off of the roads if found. This is in place to minimize or avoid toad mortality during high-use timeframes that overlap Event and public traffic.
3. Volunteer staff from the clubs will be available during Events to help slow vehicles down on sections of the 9S09 road where significant toad mortality has occurred during previous events.

Speed limits and signage:

4. A speed limit of 15 mph will be in effect on portions of roads 9S09 and 9S02 during the Events to minimize impacts to dispersing toads and for safety of road monitors (Biological Assessment, **Error! Reference source not found.**, pg 20 shows areas where speed limits will be in effect).
5. Road signs (15 mph, Slow Down) on "hot spot" mortality sections of 9S09 will be in place at least 2 days prior to each event. Where feasible, permanent signs will be installed in appropriate locations determined by the district aquatics biologist and Forest Service engineers.

Coordination:

6. Prior to each event, the High Sierra Ranger District OHV staff will coordinate with the district aquatic biologist to review:
 - a. Locations of known occupied toad habitats that overlap Event activities,
 - b. Actions to take if an individual toad is found injured or killed during Events, and
 - c. Appropriate handling of toad individuals found before, during, or after the Events.
7. During each event, the High Sierra Ranger District OHV staff will coordinate with the permittee to address the following situations:
 - a. Toads are found killed or injured on Event routes.
 - b. Participants are seen exceeding 15 mph Event speed limits on roads 9S02 and 9S09.
 - c. Additional mitigations are needed during each vent to minimize incidental take.
8. Toad species information documents will be distributed to the participants and to Event staff prior to and during each event.
9. The study location on the 9S09 (Elevated Road Segment) will be monitored and protected during Events.

Campsites outside of Bald Base camp:

10. Camping locations north of Bald Base camp within known occupied toad habitat will be avoided and temporarily closed to camping during each event.
11. If additional camping areas outside of the Bald Base camp are requested within known occupied habitats, the district aquatic biologist will be notified prior to use for additional species protection measures (if needed).
12. No camping will occur by event participants at Swamp Meadow. Camping is permitted at Swamp Lake and Mallard Lake in the designated camping locations.

Other:

13. When possible, toad road mortality data will be collected on 9S09 and 9S02 during non-Event times to compare to Event mortality.
14. If a rain event occurs or is anticipated, the permittee will reroute vehicles in a manner that eliminates Event traffic on 25E208, 9S02 and 9S09 between Base camp and 9S02. Event routes in the Red Mountain Complex will be evaluated as well.
15. No application of Magnesium Chloride dust abatement will occur in occupied areas (Biological Assessment, **Error! Reference source not found.**, pg 19). Application will stop at the 9S02/9S09 junction and will not be applied again until the 9S09KT0.18 spur/9S09 junction.

16. Event activities will avoid open dry areas in occupied habitat where numerous rodent burrows and lupine are observed, including turn-around locations or vehicle parking.
17. Any resource damage that occurs during or as a result of the Events will be rehabilitated immediately or prior to the winter season, at a minimum.

Applicable conservation measures, and how they will reduce impacts to the toad, are further described in the Effects of the Action section, below.

Action Area

The action area is defined in 50 CFR § 402.02, as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action.”

For the proposed Events, the action area encompasses 204.2 acres. This acreage is comprised of the Bald Mountain Base Camp and 88.5 miles of roads and OHV trails used for the proposed Events. Roads and trails were buffered by 10 feet to account for use of pullouts during the proposed Events.

Effects of the Action

The proposed project’s potential effects to the toad and its habitat are consistent with the effects analysis of the 2023 Programmatic Biological Opinion’s Special Use Permit subsection on pages 50-51.

The SUP for the proposed Events on the Sierra National Forest proposes to authorize three 2024 OHV events on 88.5 miles of roads and trails. Of the 204.2-acre action area, 187.6 acres is suitable habitat for the toad. Moonlight Madness from June 21-23, Head For The Hills from August 9-11, and the High Sierra Poker Run from August 30- September 2. Most participants typically camp at the Bald Mountain Base Camp, with some participants disperse camping in nearby areas. Because the toad may cross or utilize roads and trails to disperse, forage, or find refuge, injury or mortality of the toad during the Events may occur. Vehicles could directly kill or injure toads if they are on the roads (i.e., toads attempting to cross roads could be crushed). Additionally, vehicles may use pullouts or park on the side of the existing roads, causing burrows or other refugia to collapse or be damaged. Toads may be utilizing these burrows or other habitat components and could be crushed or entrapped. There could also be a temporary period where this habitat will not be available for the species (i.e., until small mammals are able to replace/repair burrows or other refugia components become available). However, because of the short-duration and temporary nature of these proposed Events, the restriction of activities to existing roads and trails, and project-specific design criteria, the proposed Events are unlikely to have a significant impact on toad suitable habitat. To reduce the likelihood of toad injury or mortality, toad monitoring by the Forest Service aquatics staff and volunteers will occur before, during, and after the proposed Events to relocate toads off of roads if found. The Forest Service also identified areas where toad mortality was high in previous years and installed an elevated road segment to allow toads to disperse safely under the road segment. The elevated road segment will decrease the amount of mortality that occurs during these proposed Events.

Cumulative Effects

During this consultation, the Service did not identify any future non-federal actions that are reasonably certain to occur in the action area of the proposed Events.

Conclusion

After reviewing the current status of the toad, the environmental baseline for the action area, the effects of the proposed Events, and the cumulative effects, it is the Service's biological opinion that the Events, as proposed, is not likely to jeopardize the continued existence of the toad. The Service reached this conclusion because the project-related effects to the species, when added to the environmental baseline and analyzed in consideration of all potential cumulative effects, will not rise to the level of precluding recovery or reducing the likelihood of survival of the species based on the following:

- 1) with implementation of the S&Gs, BMPs, and project-specific conservation measures, the Service believes the extent and significance of adverse effects to the toad and modification of their habitat will be significantly reduced; and
- 2) the areas of suitable habitat impacted by the proposed Events include only a small portion of the overall range of the toad.

INCIDENTAL TAKE STATEMENT

Amount or Extent of Take

Yosemite toad

Incidental take of the Yosemite toad is anticipated as a result of the implementation of the proposed Event. The actions analyzed in the biological opinion could take individual adult or juvenile toads due to direct death or injury from crushing by humans and machines, harm and harassment through habitat modification (e.g., removal of cover habitat), and capture. However, the Service anticipates that incidental take of the toad may be difficult to detect due to their life history and ecology. We cannot measure the total number of toads taken as a result of the proposed project because toads are difficult to observe due to their size, cryptic coloring, and complexity of their habitat. Injury or mortality of toads as a result of the proposed project are unlikely to be detected because injured individuals may seek cover (e.g., burrows) and injured and dead individuals may be predated or scavenged before daylight. We believe that if one toad is observed, it is highly likely that other undetected toads are present in the general area.

When determining take amounts for the 2024 Events, previous OHV events provided insight to the associated number of incidental take. The Forest Service implements a survey plan during the Events to better detect and document any toad injuries or mortalities that occur during Event activities, and if needed, relocating them outside the Events' routes and activities. The Service believes that the detection of one dead or injured individual toad as a result of the 2024 Events indicates the likelihood that additional individuals have been injured or killed. Therefore, for each Event, we will use detection of 4 adult or 12 juvenile dead or injured toads (directly attributable to the proposed Event activities) to determine when take is exceeded (i.e., if 5 adult or 13 juvenile dead or injured toads are detected as result of an Event then take is exceeded for that Event). We based the amount of take exempted on information provided by the Forest Service district aquatic biologist to the Service regarding meadow-specific toad habitat use, and

seasonal movements, as well as take monitoring and reporting provided for the 2017, 2018, 2019, 2020, 2022, and 2023 events (Biological Assessment, Table 6, pg 40).

We are also authorizing take in the form of capture and relocation of all toad encountered on or near the Event routes (including access roads) and camping areas should they be at risk of injury or mortality due to Event activities.

If the amount of take described above is exceeded, then as provided in 50 CFR §402.16, reinitiation of formal consultation would be required for the applicable project. Exceeding this take amount will necessitate that the Forest Service reinitiate with the Service to determine if additional avoidance measures can be used to decrease adverse effects to the toad during project implementation.

Upon implementation of the following reasonable and prudent measures, incidental take of the toad associated with the Events will become exempt from the prohibitions described in section 9 of the Act. No other forms of take are exempted under this appendage letter.

Effect of the Take

In the accompanying appendage to the 2023 Programmatic Biological Opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the toad.

This amount of incidental take will not prevent these populations of toads from recovering to pre-take levels because even with this potential loss of toads, we believe there are enough adults in the population to successfully reproduce and replace the lost individuals. In addition, the S&Gs, BMPs, and project-specific conservation measures will be effective in avoiding and minimizing the amount and extent of incidental take from the proposed Events.

We conclude that this level of incidental take does not place recovery of the toad at risk, either locally or range wide. We know that regardless of whether the Forest Service completes the proposed Events, environmental factors such as drought, movement of non-native species, predation, and natural fluctuations in the populations of these species will result in changes in the occupancy of suitable habitat throughout the action area. We do not expect these Events to exacerbate the factors that contribute to population changes over time or contribute to any long-term population declines even with the loss of individuals and habitat modification associated with the proposed Events. Recovery of the species as a whole will not be achieved or lost within the area of the proposed Events, as they include only a small portion of the species' overall range.

Terms and Conditions

In order to be exempt from the prohibitions of section 9 of the Act, the Forest Service must ensure compliance with the following terms and conditions, which implement the reasonable and prudent measure described in the 2023 Programmatic Biological Opinion. These terms and conditions are nondiscretionary.

1. The Forest Service shall include full implementation and adherence to the conservation measures as a condition of any permit or contract issued for the Events.
2. The Forest Service shall require that all personnel associated with the Events are made aware of the conservation measures and the responsibility to implement them fully.

3. In order to monitor whether the amount or extent of incidental take is exceeded, the Forest Service shall adhere to the reporting requirements in the 2023 Programmatic Biological Opinion.
4. Any capture or relocation of the toad as described above in the incidental take statement will only be undertaken by a Forest Service biologist or a Forest Service-approved biologist or qualified volunteer.

REINITIATION—CLOSING STATEMENT

This concludes formal consultation on the proposed Events described in your April 24, 2024 request letter and associated information. As provided in 50 CFR §402.16(a), reinitiation of consultation is required and shall be requested by the federal agency or by the Service where discretionary federal involvement or control over the action has been retained or is authorized by law, and:

- 1) If the amount or extent of taking specified in the incidental take statement is exceeded;
- 2) If new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered in the 2023 Programmatic Biological Opinion or this appendage;
- 3) If the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this document; or
- 4) If a new species is listed or critical habitat designated that may be affected by the identified action.

If you have any questions regarding this biological opinion, please contact Meaghan Hall, Fish and Wildlife Biologist, at (meaghan_hall@fws.gov) or Rick Kuyper, South Sierra Division Supervisor, at richard_kuyper@fws.gov, at the letterhead address or at (916) 414-6621.

Sincerely,

Michael Fris
Field Supervisor

cc:

Stephanie Barnes, U.S. Forest Service, Prather, California