

An E&E Publishing Service

ENDANGERED SPECIES: Enviros file notice to sue FWS over incidental take permits (Friday, August 2, 2013)

Debra Kahn, E&E reporter

An environmental group is planning to sue the Fish and Wildlife Service over its approval of permits to kill species listed under the Endangered Species Act, saying there should be more opportunity for public notice and comments.

At issue is the threatened California red-legged frog and its habitat in wetlands surrounding a golf course near San Francisco. The frog has been the subject of a lawsuit pitting golfers against environmentalists, but the latest salvo targets an issue that could affect permits nationwide.

The San Francisco-based Wild Equity Institute filed a [notice of intent](#) to sue this week, saying FWS improperly approved a permit extension for a company operating in San Francisco's Sharp Park golf course.

The group alleges that during the winter of 2011, masses of frog eggs were illegally dried out and removed at one of the company's project sites. FWS should not have renewed the company's incidental take permit for the frog without providing an opportunity for public comment, the group says.

The company, Swaim Biological Inc., had a permit that allowed harm to the species in order to perform research or improve its survival. The permit was renewed in March 2012, according to the notice. Swaim Biological did not respond to requests for comment.

The notice asks FWS to vacate and conduct a new analysis of all permits renewed without notice and comment, which is an "unknown number," according to Wild Equity Institute Executive Director Brent Plater.

"We've left it a little bit vague because we're trying to prove a negative," Plater said. "We can't say for certain there are regions that have complied ... because we don't have the data about all permit applications that have occurred. We don't want to let anybody off the hook just because of the information we have at present."

A spokesman for FWS' Region 8, which encompasses California, Nevada and part of Oregon, said the agency announces incidental take permits and renewals in the *Federal Register* and allots a 30-day comment period, but only for endangered species. Permits for threatened species, like the red-legged frog, are not required to be publicized, said spokesman Scott Flaherty.

Region 8 issues about 100 of the specific type of permit -- known as 10(a)(1)(A) -- per year, he said.

Plater said the suit would be filed in federal court in either the Northern or Eastern district of California.