

Source and name of referenced material	49 CFR reference
G. NACE International (NACE): (1) NACE Standard RP0169–2002 “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”. (2) Reserved	§ 195.571.

Issued in Washington, DC on July 11, 2005.  
**Theodore L. Willke,**  
*Deputy Associate Administrator for Pipeline Safety.*  
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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AT68

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Central Population of California Tiger Salamander

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for the Central population of the California tiger salamander and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis identifies potential costs of approximately \$367 million over a 20-year period or \$32.8 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until August 3, 2005.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Field Supervisor, U.S. Fish and Wildlife Service, 2800

Cottage Way, Suite W–2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 916/414–6710; or

3. You may send comments by electronic mail (e-mail) to: [fw1Central\\_cts\\_pch@fws.gov](mailto:fw1Central_cts_pch@fws.gov). For directions on how to file comments electronically, see the “Public Comments Solicited” section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://sacramento.fws.gov/> or from the Sacramento Fish and Wildlife Office at the address and contact numbers above.

**FOR FURTHER INFORMATION CONTACT:** Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

#### SUPPLEMENTARY INFORMATION:

##### Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (69 FR 48570, August 10, 2004) and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat, as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of including such area as part of critical habitat;

(2) Specific information on the amount and distribution of California tiger salamander (CTS) habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the CTS, and how many were either already in place or enacted for other reasons;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(6) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(8) The draft economic analysis indicated potentially disproportionate impacts to areas within Alameda, Contra Costa, and Monterey Counties. Based on this information, we are considering excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment along with additional information concerning our final determination for these three areas along with any other areas with potentially disproportionate impacts.

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; does our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses warrant further consideration, and is there other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

(12) We are also considering excluding, and are requesting comments on the benefits of excluding or including in critical habitat the following areas from the final designation:

(a) The areas in east Contra Costa County covered by the Draft East Contra Costa Habitat Conservation Plan. This document will be out for public review soon and will be available on the Internet at <http://sacramento.fws.gov> (Central Valley Region Units 14, 15, 16 and portions of 17);

(b) The proposed critical habitat within the San Luis Refuge National Wildlife Complex (Central Valley Region Units 12 and 13) and the San Francisco Bay National Wildlife Complex (East Bay Region Unit 4); and

(c) The subunits within the Fort Hunter Liggett Army Installation (Central Coast Region Unit 5a and 5b).

An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period for the August 10, 2004 proposed rule need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information we receive.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-AT68" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state

this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office at the address listed under **ADDRESSES**.

Copies of the draft economic analysis are available on the Internet at: <http://sacramento.fws.gov/>. You may obtain copies of the proposed rule from the above address, by calling 916/414-6600.

### Background

We published a proposed rule to designate critical habitat on August 10, 2004 (69 FR 48570). The proposed critical habitat totaling approximately 382,666 acres (ac) (154,860 ha (ha)) in 4 geographic regions in 47 units, is in the following 20 counties in central California: Alameda, Amador, Calaveras, Contra Costa, Fresno, Kern, Kings, Madera, Mariposa, Merced, Monterey, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Clara, Solano, Stanislaus, Tulare, and Yolo. This proposed critical habitat does not include areas within Santa Barbara or Sonoma Counties. A final critical habitat designation for the California tiger salamander in Santa Barbara County was published on November 24, 2004 (69 FR 68568). We are also currently in the process of completing a proposed designation for the California tiger salamander in Sonoma County which will be published in the **Federal Register** at a future date. Per settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for the CTS in Sonoma County on or before December 1, 2005.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the

species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based on the August 10, 2004, proposed rule to designate critical habitat for the Central population of California tiger salamander, we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately \$367 million over a 20-year period or \$32.8 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. The analysis measures lost economic efficiency associated with residential and commercial development, public projects and activities, such as economic impacts on transportation projects, the energy industry, University of California, Merced, and public lands such as those managed by the Department of Defense, Bureau of Land Management, Fish and Wildlife Service, and Bureau of Indian Affairs.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Central population of California tiger salamander including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the California tiger salamander in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). This analysis

also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as a threatened species and considers those costs that may occur in the 20 years following the designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed California tiger salamander critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$283 to 367 million from 2005 to 2025. Overall, the residential and commercial industry is calculated to experience the highest of estimated costs. Of the 20 counties that are part of this current proposal, the four most impacted counties are Alameda, Contra Costa, Monterey and Santa Clara. Annualized impacts of costs attributable to the designation of critical habitat are projected to be between approximately \$32.8 million.

#### Required Determinations—Amended

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

##### *Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996),

whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the California tiger salamander would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected

by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the California tiger salamander and proposed designation of its critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. We estimated the number of affected small businesses, the number of houses built per small firm was calculated, and it appears that less than two small firms maybe be affected in Sacramento County, and one, or less than one, each in Contra Costa, Alameda, Monterey, Fresno, Santa Clara, and San Benito counties. These firms may be affected by activities associated with the conservation of the Central population of California tiger salamander, inclusive of activities associated with listing, recovery, and critical habitat. Critical habitat is not expected to result in significant small business impacts. Thus, in the development of our final rule, we will explore potential alternatives to minimize impacts to these affected small business entities. These alternatives may include the exclusion of all or portions of critical habitat units in these counties. As such, we expect that the final designation of critical habitat for the Central population of California tiger salamander will not result in a significant impact on small business entities.

Therefore, we believe that the designation for the Central population of California tiger salamander will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding areas from the final critical habitat designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in particular counties.

We determined that the critical habitat designation is expected to have the largest impacts on the market for

developable land. The proposed critical habitat designation for California tiger salamander occurs in a number of rapidly growing communities. Regulatory requirements to avoid onsite impacts and mitigate offsite affect the welfare of both producers and consumers. Two scenarios are considered. In the first scenario, avoidance requirements are assumed to reduce the stock of new housing. Given the importance of regulation of housing development even in the absence of critical habitat, this scenario is taken as the base case. In this scenario, critical habitat is expected to impose losses of over \$367 million over the 20-year study period. An alternative scenario is constructed in which all avoidance requirements are accommodated through densification. In this case, welfare losses from critical habitat are \$283 million over the 20-year study period.

These economic impacts of critical habitat designation vary widely among the 20 affected counties, and even within counties. The counties most impacted by the critical habitat designation include: Alameda (\$131 million), Contra Costa (\$91 million), Monterey (\$67 million), Santa Clara (\$23 million), and San Benito (\$23 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision.

Please refer to our draft economic analysis of this critical habitat designation for a more detailed discussion of potential economic impacts.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal

mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would

critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the Central population of CTS, the impacts on non-profits and small governments are expected to be negligible and are not examined in this analysis. There is no record of consultations between the Service and any of these governments since the Central population of CTS was listed in 2004. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the Central population of CTS within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the Central population of CTS will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

#### *Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for Central population of CTS. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the Central population of CTS does not pose significant takings implications.

#### *Author*

The primary author of this notice is the staff of the Sacramento Fish and Wildlife Office.

#### *Authority*

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: July 13, 2005.

#### **Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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