

variation (Thomas 2009, pers. comm.). Because of the reduction in genetic exchange it faces in the wild, the species is less capable of withstanding other environmental stressors like drought, or climate change (Thomas 2009, pers. comm.).

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Sisyrinchium sarmentosum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from development, livestock trampling, plant succession, and possibly ORV use; and due to other natural or manmade factors affecting its continued existence resulting from genetic reduction, drought, and effects of climate change.

#### *Trifolium friscanum* (Frisco clover)

*Trifolium friscanum* is a narrow endemic with small populations (Evenden 1998, p. 6). The two element occurrences are restricted to limestone outcrops on Grampian Hill in Beaver County, Utah (Evenden 1998, appendix C), and in the nearby Tunnel Spring Mountains (Evenden 1999, pp. 6–7). Estimates of the area of occupied habitat vary from 30 ha (75 ac) (Evenden 1998, appendix C; Evenden 1999, appendix B) to 225 ha (560 ac) (Kass 1992, pp. 7–8). Estimates of the species' total population vary from 2,000 individuals (Kass 1992, p. 7) to approximately 3,500 individuals (Evenden 1998, appendix C; Evenden 1999, appendix B).

**Factor A:** Mineralized limestone substrates that sustain the species were historically subjected to habitat destruction from precious metals mining. Over 80 percent of the species' habitat is located on lands having private, patented mining claims (Evenden 1998, p. 9; Kass 1992, p. 9).

**Factors B, C, D, and E:** No information was presented in the petition concerning threats to this species from the factors.

Based on our evaluation of the information provided in the petition and in our files, we have determined that the petition presents substantial information to indicate that listing of *Trifolium friscanum* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from mining.

#### Finding

We reviewed and evaluated 38 of the 206 petitioned species, based on the information in the petition and the

literature cited in the petition, and we have evaluated the information to determine whether the sources cited support the claims made in the petition relating to the five listing factors. We also reviewed reliable information in our files.

We find that the petition does not present substantial information that listing may be warranted for nine species: Washington dusksnail (*Amnicola sp. 2*), *Camissonia exilis* (Cottonwood Spring suncup), lake disc (*Discus brunsoni*), *Frasera gypsicola* (Sunnyside green-gentian), *Lomatium latilobum* (Canyonlands lomatium), *Lygodesmia doloresensis* (Dolores river skeletonplant), Drummond mountainsnail (*Oreohelix sp. 4*), Bitterroot mountainsnail (*Oreohelix amariradix*), and keeled mountainsnail (*Oreohelix carinifera*).

We find that the petition presents substantial scientific or commercial information that listing the remaining 29 of the 38 species that we evaluated as threatened or endangered under the Act may be warranted. Therefore, we are initiating a status review to determine whether listing these 29 species under the Act is warranted.

We previously determined that emergency listing of any of the 38 species is not warranted. However, if at any time we determine that emergency listing of any of the species is warranted, we will initiate an emergency listing.

The petitioners also request that critical habitat be designated for the species concurrent with final listing under the Act. If we determine in our 12-month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

#### References Cited

A complete list of references cited is available on the Internet at Docket No. FWS–R2–ES–2008–0131 at <http://www.regulations.gov> and upon request from the Mountain-Prairie Region Ecological Services Office (see **ADDRESSES**).

#### Author

The primary authors of this document are the staff members of the Mountain-Prairie Region Ecological Services Offices (see **ADDRESSES**).

#### Authority

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

Dated: August 6, 2009.

**Jerome Ford,**

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–19494 Filed 8–17–09; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R8–ES–2009–0044; 92210–1117–0000–FY09–B4]

RIN 1018–AU23

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sonoma County Distinct Population Segment of California Tiger Salamander (*Ambystoma californiense*)

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

**ACTION:** Proposed rule; public hearing announcement.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Sonoma County distinct population segment (DPS) of the California tiger salamander (*Ambystoma californiense*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 74,223 acres (30,037 hectares) are being proposed for designation as critical habitat. The proposed critical habitat is located in Sonoma County, California.

**DATES:** We will accept comments received or postmarked on or before October 19, 2009. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 2, 2009.

**ADDRESSES:** You may submit comments by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R8–ES–2009–0044.

- **U.S. mail or hand-delivery:** Public Comments Processing, Attn: FWS–R8–ES–2009–0044; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Susan Moore, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, Cottage Way, W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6713. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:****Public Comments**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent;

(2) Specific information on:

- The amount and distribution of California tiger salamander (CTS) habitat,
- What areas occupied at the time of listing and that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(4) Information that may assist us in clarifying the primary constituent elements;

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

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any

impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts;

(7) Information on whether the benefit of exclusion of any particular area, such as areas covered by habitat conservation plans or other types of management agreements, outweighs the benefit of inclusion under section 4(b)(2) of the Act; and

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information, such as your street address, phone number, or e-mail address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the California tiger salamander, a physical description of the California tiger salamander and other information about its taxonomy, distribution, life history, and biology is included in the Background section of the final rule to list California tiger salamander as a threatened species, published in the **Federal Register** on August 4, 2004 (69 FR 47212). Additional relevant information may be found in the final rules to list the Santa Barbara County Distinct Population Segment (DPS) (65 FR 57242; September 21, 2000) and the Sonoma County DPS of California tiger salamander (68 FR 13498; March 19,

2003); the proposed rules to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 3064; January 22, 2004) and the Central population of the species range (69 FR 48570; August 10, 2004); and the final rules to designate critical habitat for the California tiger salamander in Santa Barbara County (69 FR 68568; November 24, 2004) and the Central population (70 FR 49380; August 23, 2005). The information contained in those previous **Federal Register** documents was used in developing this rule.

*Previous Federal Actions*

On August 4, 2004, we listed the Central California population of the California tiger salamander as a DPS as threatened (69 FR 47211). At that time we reclassified the California tiger salamander as threatened throughout its range (69 FR 47211), removing the Santa Barbara County and Sonoma County populations as separately listed DPSs (69 FR 47241).

On August 18, 2005, as a result of litigation of the August 4, 2004, final rule (69 FR 47211) on the reclassification of the California tiger salamander DPSs (*Center for Biological Diversity et al. v. United States Fish and Wildlife Service et al.* (Case No. C-04 4324 WHA (N.D. Cal. 2005))), the District Court of Northern California sustained the portion of the 2004 final rule pertaining to listing the Central California tiger salamander as threatened with a special rule, vacated the 2004 rule with regard to the Santa Barbara County and Sonoma County DPSs, and reinstated their prior listing as endangered. We are making the necessary changes to the information included in the Code of Federal Regulations (CFR) in the Regulatory section of this rule and will finalize the changes in the final critical habitat for the Sonoma County DPS of the California tiger salamander.

With respect to critical habitat, on October 13, 2004, a complaint was filed in the U.S. District Court for the Northern District of California (*Center for Biological Diversity et al. v. U.S. Fish and Wildlife Service et al.* (Case No. C-04 4324 FMS (N.D. Cal. 2005))), which in part challenged the failure of designating critical habitat for the California tiger salamander in Sonoma County. On February 3, 2005, the District Court approved a settlement agreement that required the Service to submit a final determination on the proposed critical habitat designation for publication in the **Federal Register** on or before December 1, 2005. On August 2, 2005 (70 FR 44301), the Service

published a proposed rule to designate approximately 74,223 acres (ac) (30,037 hectares (ha)) of critical habitat, and on November 17, 2005, we published a revised proposed rule indicating we were considering approximately 21,298 acres for the final designation (70 FR 69717). On December 14, 2005, the Service published a final rule in the **Federal Register** (70 FR 74138), which excluded all proposed critical habitat, resulting in a designation of zero acres of critical habitat.

On February 29, 2008, we received a notice of intent to sue from the Center for Biological Diversity that challenged the Service's final designation of critical habitat claiming that it was not based on the best available scientific information. On May 5, 2009, the Court approved a stipulated settlement agreement where the Service agreed to publish a revised proposed rule within 90 days that encompasses the same geographic area as the August 2005 proposal. This revised proposed rule complies with the May 1, 2009, stipulated agreement.

### Critical Habitat

#### *Background*

Critical habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) Essential to the conservation of the species and

(II) Which may require special management considerations or protection; and

(ii) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and translocation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the applicant is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General

Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. Areas that support populations are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

*Primary Constituent Elements (PCEs)*

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas occupied by the species at the time of listing to propose as critical habitat, we consider those physical and biological features that are essential to the conservation of the species that may require special management considerations or protection. We consider the physical and biological features to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific PCEs from the California tiger salamander's biological needs. The physical and biological features are those PCEs essential to the conservation of the species, laid out in the appropriate quantity and spatial arrangement. All areas proposed as critical habitat for the Sonoma population are within the species' historical range and contain one or more of the PCEs identified as essential for the conservation of the species. Critical habitat for the Sonoma population includes aquatic habitat, upland nonbreeding habitat with underground refugia, and dispersal habitat connecting occupied California tiger salamander locations. The critical habitat we have proposed is designed to allow for an increase in the size of California tiger salamander populations in Sonoma County.

Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools, and other ephemeral or permanent water bodies that typically support inundation during winter rains and hold water for a minimum of 12 consecutive weeks in a year of average rainfall, are features that are essential for Sonoma population breeding and for providing space, food, and cover necessary to sustain early life-history stages of larval and juvenile California tiger salamander. The 12 consecutive week timeframe includes

the timing of winter rains initially fill pools or ponds and signal adults to move to these areas for breeding. Spring rains then maintain pool inundation which allows larvae time needed to grow into metamorphosed juveniles so they can become capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis; however, these sites still meet the definition of critical habitat for the species because they constitute breeding habitat in years of average rainfall. Without areas that have these essential features, the Sonoma population would not survive, reproduce, and develop juveniles that could grow into adult individual salamanders that can complete their life cycles.

Stock ponds and vernal pools provide a significant amount of habitat for the Sonoma population remaining in the Santa Rosa Plain. Manmade stock ponds have joined or, in some areas, replaced vernal pools as breeding habitat. A landscape that supports a California tiger salamander population is typically interspersed with vernal pools or stockponds that remain inundated for at least 12 weeks in a year with average rainfall.

Upland habitats containing underground refugia have features that are essential for the survival of adult salamanders and juvenile salamanders that have recently undergone metamorphosis. Adult and juvenile California tiger salamanders are primarily terrestrial. Adult California tiger salamanders enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, California tiger salamanders depend on upland habitats containing underground refugia in the form of small mammal burrows or other underground structures for their survival. These burrows provide protection from the hot, dry weather typical of California in the nonbreeding season. California tiger salamanders also find food in these refugia and rely on them for protection from predators. The presence of small burrowing mammal populations is a key element for the survival of the California tiger salamander because they construct burrows used by California tiger salamanders. Because California tiger salamanders do not construct burrows of their own, without the continuing presence of small mammal burrows in upland habitats, California tiger salamanders would not be able to survive.

Upland areas associated with the water bodies are an important source of nutrients to stock ponds or vernal pools (Swanson 1974, p. 406). These nutrients provide the foundation for the aquatic community's food chain, which includes invertebrate and vertebrate animals constituting important food sources for salamanders (Morin 1987, p. 184).

Dispersal habitats for this species are generally upland areas adjacent to aquatic habitats which provide connectivity among California tiger salamander suitable aquatic and upland habitats. While California tiger salamander can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitats connecting essential aquatic and upland habitats need to be accessible (no physical or biological attributes that prevent access to adjacent areas) to function effectively. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of California tiger salamanders, however, a busy highway or interstate may constitute a barrier. The extent to which any attribute is a barrier is a function of the specific geography of the area and its contribution to limiting salamander access to a greater or lesser extent.

Dispersal habitats are needed for the conservation of the California tiger salamander. Protecting the ability of California tiger salamanders to move freely across the landscape in search of suitable aquatic and upland habitats is essential in maintaining gene flow and for recolonization of sites that may become temporarily extirpated. Lifetime reproductive success for the California tiger salamander and other tiger salamanders may be naturally low. Trenham *et al.* (2000, p. 372) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This reproduction resulted in roughly 12 metamorphic offspring over the lifetime of a female. In part, this low reproductive rate may be due to the extended time it takes for California tiger salamanders to reach sexual maturity; most do not breed until 4 or 5 years of age. While individuals may survive for more than 10 years, it is possible that many breed only once. This presumed low breeding rate, combined with a hypothesized low survivorship of metamorphosed individuals, indicates that reproductive output may not be sufficient to maintain populations.

Dispersal habitats help to preserve the population structure of the California tiger salamander. The life history and

ecology of the California tiger salamander make it likely that this species has a metapopulation structure. A metapopulation is a set of breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable upland and aquatic habitats (*i.e.*, dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of salamanders, local extinction of these small units may be common. The persistence of a metapopulation depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991, pp. 7–9; Hanski 1994, p. 151).

Based on the above needs and our knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life-history functions of the species, we have determined that the primary constituent elements for the California tiger salamander in Sonoma County are:

(1) Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools and other ephemeral or permanent water bodies that typically support inundation during winter/early spring and hold water for a minimum of 12 consecutive weeks in a year of average rainfall.

(2) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows or other underground refugia that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(3) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

#### Methods

This proposal is an updating of the 2005 proposed critical habitat designation for the Sonoma County DPS of the California tiger salamander. As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the California tiger salamander in Sonoma County. We reviewed the overall approach to the conservation of the California tiger salamander undertaken by local, State, and Federal agencies operating within the species' range within Sonoma

County and those efforts related to the conservation strategy being undertaken by the resource agencies, local governments, and representatives from the environmental and building communities.

We based the extent of the proposed critical habitat for the California tiger salamander in Sonoma County on historical and current range of the species as well as the Santa Rosa Plain conservation strategy. Historical records for the species and/or its habitat have been documented throughout the Santa Rosa Plain and into the Petaluma River watershed. Additional criteria used in refining the extent of the critical habitat were the specific soil types associated with habitat for the species and below the 200-foot (61-meter) elevation. Major water courses or floodplains were used to delineate boundaries where information on their location and extent was available. In addition, we used aerial photography to examine historic and current habitat as well as land use patterns.

We have also reviewed available information that pertains to the upland and aquatic habitat requirements of this species. Based on the best available information, we included areas where the species historically occurred, or currently occurs, or has the potential to occur based on the suitability of habitat. We identified areas that represent the range of environmental, ecological, and genetic variation of the California tiger salamander in Sonoma County and contain the primary constituent elements (*see Primary Constituent Elements*).

After identifying the PCEs, we used the PCEs in combination with information on California tiger salamander locations, geographic distribution, vegetation, topography, geology, soils, distribution of California tiger salamander occurrences within and between vernal pool types, watersheds, current land uses, scientific information on the biology and ecology of the California tiger salamander, and conservation principles to identify essential habitat. As a result of this process, the proposed critical habitat unit possesses a combination of occupied and potential aquatic and upland habitat types, including topography, landscape features, and surrounding land uses, and represents the geographical range and environmental variability of habitat for the California tiger salamander.

This proposed unit was delineated by digitizing a polygon (map unit) using ArcView (Environmental Systems Research Institute, Inc.) GIS program. The polygon was created by modifying

the Potential Range of the California tiger salamander polygon as identified in the *Santa Rosa Plain Conservation Strategy Map* (California Department of Fish and Game 2005, p. 1). We evaluated the historic and current geographic range and potential suitable habitat, and identified areas of nonessential habitat (*i.e.*, not containing PCEs) (*see Primary Constituent Elements*). Those undeveloped areas within and adjacent to developed areas that contain the PCEs are considered potential critical habitat for the species.

#### Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas within the geographical area occupied at the time of listing contain features essential to the conservation of the species that may require special management considerations or protection.

Within the single unit proposed as critical habitat, we find that the features essential to the conservation of the California tiger salamander may require special management considerations or protection because of the threats outlined below:

(1) Activities that would threaten the utility of California tiger salamander breeding ponds in Sonoma County, such as introduction of nonnative predators, including bullfrogs and nonnative fish;

(2) Activities that could disturb aquatic breeding habitats during the breeding season, such as heavy equipment operation, ground disturbance, maintenance projects (*e.g.*, pipelines, roads, powerlines), off-road travel, or recreation;

(3) Activities that impair the water quality of aquatic breeding habitat;

(4) Activities that would reduce small mammal populations to the point that there are insufficient underground refugia used by California tiger salamander in Sonoma County for foraging, protection from predators, and shelter from the elements;

(5) Activities that create barriers impassable for salamanders or increase mortality in upland habitat between extant occurrences in breeding habitat; and

(6) Activities that disrupt vernal pool complexes' ability to support California tiger salamander breeding function.

In the case of the California tiger salamander in Sonoma County, natural repopulation is likely not possible without human assistance and landowner cooperation. Examples of such proactive activities that benefit the California tiger salamander include enhancement or creation of breeding ponds and control of nonnative

predators. These are the types of proactive, voluntary conservation efforts that are necessary to prevent the extinction and promote the recovery of many other species (Wilcove and Lee 2004, p. 639; Shogren *et al.* 1999, p. 1260; Wilcove and Chen 1998, p. 1260; Wilcove *et al.*, 1996, pp. 3–5).

#### *Criteria Used To Identify Critical Habitat*

As required by section 4(b) of the Act and according to section 424.12 of our implementing regulations in the Code of Federal Regulations, we used the best scientific data available in determining areas within the geographical area occupied at the time of listing that contain the features essential to the conservation of the California tiger salamander, and areas outside of the geographical area occupied at the time of listing that are essential for the conservation of the California tiger salamander. We are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain the features essential to the conservation of the California tiger salamander in Sonoma County.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack PCEs for the California tiger salamander. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these undesignated lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the PCEs in the adjacent designated critical habitat.

#### **Proposed Critical Habitat Designation**

We are proposing to designate as a single unit critical habitat for the California tiger salamander in the Santa Rosa Plain Region. The critical habitat area described below constitutes our current best assessment of the areas that meet the definition of critical habitat for the California tiger salamander.

The approximate area encompassed within the proposed critical habitat is

74,223 acres (ac) (30,037 hectares (ha)), including approximately 887 ac (359 ha) of State lands (676 ac (274 ha) California Department of Fish and Game lands and 211 ac (85 ha) State Commission lands), 26 ac (10.5 ha) of County Regional Park land, and 73,336 ac (29,678 ha) of private and other lands. The area estimate reflects all land within the critical habitat unit boundary. No Federal lands are included in this proposed unit.

We present a brief unit description below and an explanation why it meets the definition of critical habitat for California tiger salamander in Sonoma County. The unit is located in central Sonoma County, bordered on the west by the Laguna de Santa Rosa, on the south by Skillman Road northwest of Petaluma, on the east by the foothills, and on the north by Windsor Creek.

The Santa Rosa Plain and adjacent areas are characterized by vernal pools, seasonal wetlands, and associated grassland habitat. This proposed designation represents the northernmost part of the geographic distribution of California tiger salamander and includes lands that support California tiger salamander breeding in various vernal pool complexes. This unit contains the physical and biological features essential to the conservation of the California tiger salamander in Sonoma County. The proposed designation encompasses nine vernal pool complexes, each of which contains wetlands that currently support breeding California tiger salamander in Sonoma County. At the time of listing (2003), eight of these complexes were known breeding sites, a ninth breeding location was determined subsequent to listing.

The physical and biological features essential to the conservation of the California tiger salamander in Sonoma County may require special management considerations or protections to minimize impacts from: nonnative predators; disturbance of aquatic breeding habitats; activities that impair the water quality of aquatic breeding habitat; activities that reduce underground refugia; creation of impassable barriers; and disruption of vernal pool complex processes (*see Special Management Considerations or Protections* section above).

#### **Effects of Critical Habitat Designation**

##### *Section 7 Consultation*

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat.

Decisions by the Fifth and Ninth Circuits Court of Appeals have invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (*see Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those PCEs that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define “Reasonable and prudent alternatives” at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action;
- Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction;
- Are economically and technologically feasible; and
- Would, in the Director’s opinion, avoid jeopardizing the continued existence of the listed species or

destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the California tiger salamander or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not Federally funded, authorized, or permitted, do not require section 7 consultations.

#### *Application of the "Adverse Modification" Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the California tiger salamander. As discussed above, the role of critical habitat is to support the life-history

needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the California tiger salamander include, but are not limited to:

(1) Actions that would significantly compromise the function of vernal pools, swales, ponds, and other seasonal wetlands as described in the *Primary Constituent Elements* section (see PCE number 1). Such activities could include, but are not limited to, constructing new structures, vineyards, and roads; disking; grading; and water diversion. These activities could destroy California tiger salamander breeding sites, reduce the hydrological regime necessary for successful larval metamorphosis, and/or eliminate or reduce the habitat necessary for the growth and reproduction of the California tiger salamander.

(2) Actions that would significantly fragment and isolate aquatic and upland habitat. Such activities could include, but are not limited to, constructing new structures and new roads. These activities could limit or prevent the dispersal of California tiger salamanders from breeding sites to upland habitat or vice versa due to obstructions to movement composed of structures, certain types of curbs, or increased traffic density. These activities could compromise the metapopulation structure of the Sonoma population by reducing opportunities for recolonization of some sites that may have experienced natural local extinctions.

All lands proposed for designation as critical habitat are within the geographic area occupied by the species, and may be used by the California tiger salamander, whether for foraging, breeding, growth of larvae and juveniles, dispersal, migration, genetic exchange, or sheltering. Areas within the Santa Rosa Plain proposed critical habitat unit that contain the PCEs are essential to the conservation of the California tiger salamander. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

Consultations could arise if a project is proposed within a currently unoccupied portion of a critical habitat unit and the PCEs of the designated critical habitat may be adversely affected by the project.

#### **Exemptions**

##### *Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation; therefore, there are no exemptions in this proposed rule.

#### **Exclusions**

##### *Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary must designate and revise

critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make the determination that the benefits of exclusion outweigh the benefits of inclusion, we can exclude the area only if such exclusion would not result in the extinction of the species.

#### Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

We will announce the availability of the draft economic analysis in the **Federal Register** as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.regulations.gov>, or by contacting the Sacramento Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

#### Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the California tiger salamander are not owned or managed by the DOD, and therefore, anticipate no impact to national security. There are no areas proposed for exclusion based on impacts on national security.

#### Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we are requesting comments on the benefit to the California tiger salamander from the Sonoma County Office of Education's Low-Effect HCP, which covers approximately 4.42 ac (1.79 ha) in Santa Rosa, California; however, at this time, we are not proposing the exclusion of any areas in the proposed revised critical habitat for the Sonoma population of the California tiger salamander. We also request comments or information on any other management plans for the California tiger salamander within the proposed critical habitat unit. We have determined that the proposed designation does not include any Tribal lands or trust resources, and we anticipate no impact to Tribal lands or trust resources from this proposed critical habitat designation.

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data,

assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on the data used, specific assumptions, and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final rule may differ from this proposed rule.

#### Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

#### Required Determinations

##### *Regulatory Planning and Review*

Executive Order 12866 requires Federal agencies to submit proposed and final significant rules to the Office of Management and Budget (OMB) prior to publication in the FR. The Executive Order defines a rule as significant if it meets one of the following four criteria:

(a) The rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government;

(b) The rule will create inconsistencies with other Federal agencies' actions;

(c) The rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; or

(d) The rule raises novel legal or policy issues.

It has been determined that this rule is not "significant."

##### *Regulatory Flexibility Act*

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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make 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, 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 [T]ribal 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 [T]ribal 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. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, 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) We do not believe that this rule will significantly or uniquely affect small governments. The lands being proposed for critical habitat are mostly private lands with some other local government lands. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other

authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from the designation of critical habitat are anticipated. Because we believe this rule will not significantly or uniquely affect small governments, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

#### *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 designating critical habitat for the California tiger salamander in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the California tiger salamander does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State of California resource agencies. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or

authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

#### *Civil Justice Reform*

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the California tiger salamander.

#### *Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act (NEPA)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

#### *Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1,

1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, *etc.*

#### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act", we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands essential for the conservation of the California tiger salamander. Therefore, designation of critical habitat for the Sonoma population of the California tiger salamander has not been designated on Tribal lands.

#### *Energy Supply, Distribution, or Use*

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use) 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. Based on the previous proposal and final designation of critical habitat in this area, we do not expect it to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

#### **References Cited**

A complete list of all references cited in this rulemaking is available on the Internet at <http://www.regulations.gov> and upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT*).

#### **Authors**

The primary authors of this package are the staff members of the Sacramento Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT*).

#### **List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### **Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(h), revise the entry for "Salamander, California tiger" under "AMPHIBIANS" in the List of Endangered and Threatened Wildlife to read as follows:

#### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
AMPHIBIANS							
* * * * *							
Salamander, California tiger.	<i>Ambystoma californiense</i> .	U.S.A. (CA) ....	U.S.A. (CA—Santa Barbara County).	E .....	667E, 702	17.95(d) .....	NA.
Do .....	.....do .....	.....do .....	U.S.A. (CA—Sonoma County).	E .....	729E, 734	.....do .....	.....do
Do .....	.....do .....	.....do .....	.....do .....	T .....	.....do .....	.....do .....	17.43(c).
* * * * *							
U.S.A. (CA—Central) 744							

3. Amend § 17.95(d) by revising critical habitat for the California tiger salamander (*Ambystoma californiense*) in Sonoma County to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(d) *Amphibians.*

\* \* \* \* \*

**California Tiger Salamander (*Ambystoma californiense*)**

\* \* \* \* \*

**California Tiger Salamander in Sonoma County**

(52) The critical habitat unit for Sonoma County, CA, is depicted on the map below.

(53) The primary constituent elements of critical habitat for the Sonoma County population of the California

tiger salamander are the habitat components that provide:

(i) Standing bodies of fresh water (including natural and manmade (e.g., stock) ponds, vernal pools, and other ephemeral or permanent water bodies that typically support inundation during winter and early spring and hold water for a minimum of 12 weeks in a year of average rainfall.

(ii) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows, or other underground refugia that California tiger salamanders depend upon for food, shelter, and protection from the elements and predation.

(iii) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

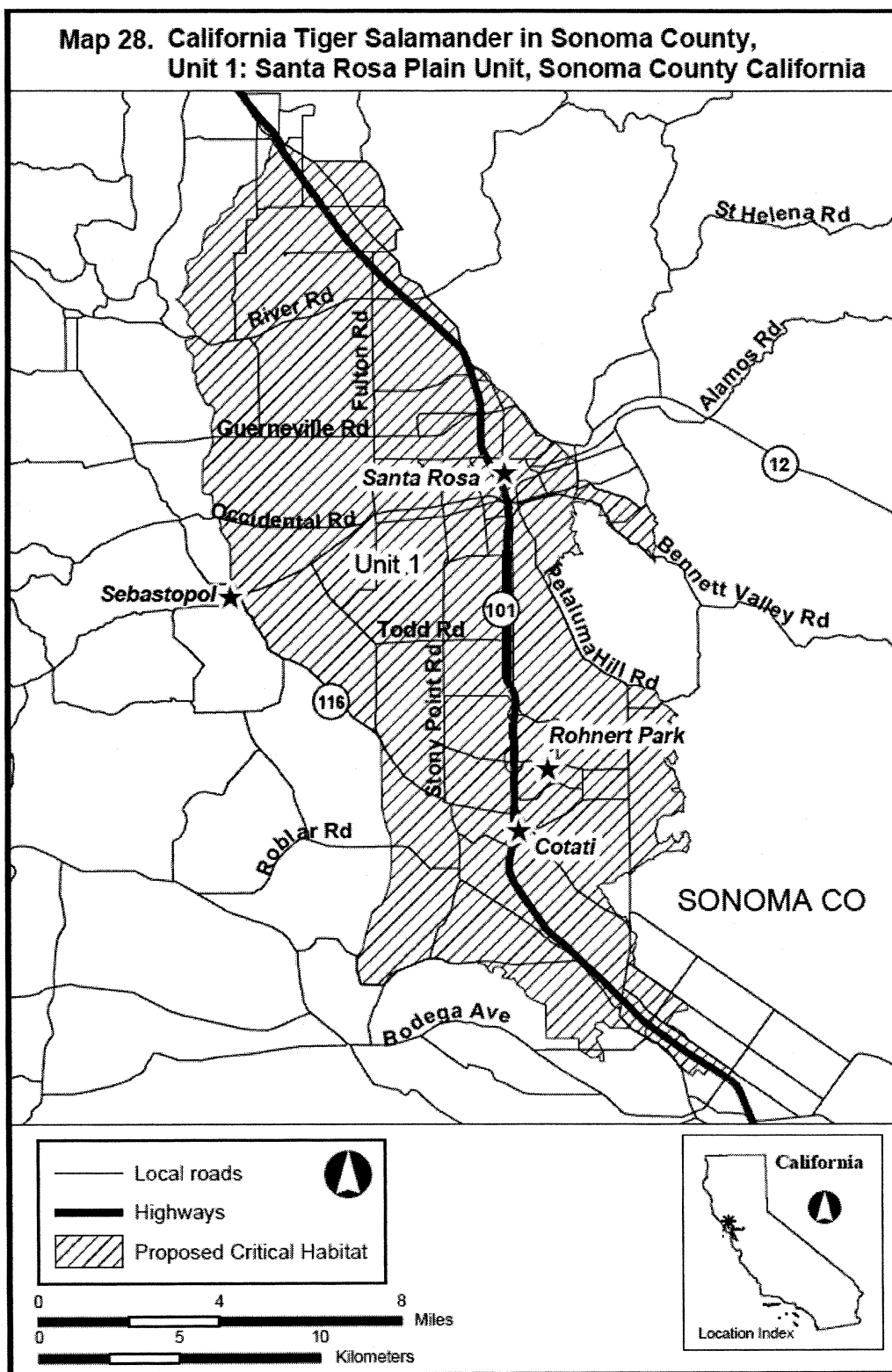
(54) Critical habitat does not include manmade structures (such as buildings,

aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(55) Critical Habitat Unit: Santa Rosa Plain Unit, Sonoma County, CA. Data layers defining the map unit were created on a base of USGS 7.5' quadrangles, and the critical habitat unit was then mapped using Universal Transverse Mercator (UTM) coordinates.

(56) Santa Rosa Plain Unit, Sonoma County, CA. From USGS 1:24,000 quadrangle map Healdsburg, Sebastopol, Santa Rosa, Two Rock, Cotati, Petaluma, and Mark West Springs, CA. *Note:* Map of Santa Rosa Plain Unit follows:

**BILLING CODE 4310-55-P**



\* \* \* \* \*

Dated: August 3, 2009.

Jane Lyder,  
Deputy Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. E9-18885 Filed 8-17-09; 8:45 am]

BILLING CODE 4310-55-C