

procedures, and business practices) that are developed or adopted by VCS bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve changes to the technical standards related to test methods or monitoring methods; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), because it does not change any regulatory requirements, it merely corrects and clarifies existing requirements.

**List of Subjects in 40 CFR Parts 60 and 63**

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, and Reporting and recordkeeping requirements.

Dated: January 10, 2011.

**Lisa P. Jackson,**  
*Administrator.*

[FR Doc. 2011-765 Filed 1-14-11; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R8-ES-2009-0044; MO 92210-0-0009]

**RIN 1018-AW86**

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

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

**ACTION:** Revised proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on our August 18, 2009, proposed designation of critical habitat for the Sonoma County Distinct Population Segment of the California tiger salamander (*Ambystoma californiense*) under the Endangered Species Act of 1973, as amended. We also announce revisions to the proposed critical habitat unit, as it was described in the proposed rule published in the **Federal Register** on August 18, 2009 (74 FR 41662), and announce the availability of the draft economic analysis for the revised proposed critical habitat designation and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the revised proposed critical habitat, the associated draft economic analysis, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

**DATES:** We will consider public comments received on or before February 17, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

**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 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, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6713. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We intend that any final action resulting from this revised proposed rule will be based on the best scientific data available and will be as accurate and as effective as possible. We will accept written comments and information during this reopened comment period on our amended proposed designation of critical habitat for the Sonoma County Distinct Population Segment of the California tiger salamander that was published in the **Federal Register** on August 18, 2009 (74 FR 41662), our draft economic analysis (DEA) of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties.

Therefore, during this reopened comment period we request comments or information from the public, other concerned government agencies, the scientific community, industry, or other interested party on: (1) The proposed rule to designate critical habitat for the Sonoma County Distinct Population Segment (DPS) of the California tiger salamander that was published in the **Federal Register** on August 18, 2009 (74 FR 41662), the revisions to proposed critical habitat described herein (see Revisions to Proposed Critical Habitat section), and the DEA of the revised proposed designation; (2) the considered exclusion of critical habitat; and (3) the amended Required Determinations section provided in this document. We are particularly interested in comments concerning:

- (1) The proposed critical habitat designation (which comprises a single critical habitat unit), as revised in this

notice (*see* the Revisions to Proposed Critical Habitat section, below).

(2) The reasons we should or should not designate the revised proposed 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 to which such threats can be expected to increase due to designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(3) Specific information on:

(a) The amount and distribution of California tiger salamander habitat, including areas that provide habitat for the Sonoma County DPS of the California tiger salamander that we did not discuss in this revised proposed critical habitat rule;

(b) Areas within the geographical area occupied by the species at the time of listing that contain the physical and biological features essential to the conservation of the species which may require special management considerations or protection, that we should include in the designation and reason(s) why (*see* Primary Constituent Elements (PCEs) section of the revised proposed rule for further discussion); and

(c) Areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species, why the areas are essential, and whether they should be included in the designation.

(4) Additional information concerning the range, distribution, and population size of this species, including the locations of any additional populations of the Sonoma County DPS of the California tiger salamander that would help us further refine the boundaries of critical habitat.

(5) Information that may assist us in clarifying the primary constituent elements.

(6) Land-use designations and current or planned activities in the area proposed as critical habitat, as well as their possible effects on the revised proposed critical habitat.

(7) How the revised proposed critical habitat boundaries could be refined to more closely circumscribe the areas identified as containing the features essential to the species’ conservation. In particular, we are interested in specific information on the southeasterly portion of the revised critical habitat that is east of Petaluma Hill Road and south of Martinez Drive, and that is delineated as a “no effect” area in Enclosure 1 (California Department of Fish and

Game 2008) of the “Programmatic Biological Opinion for the U.S. Army Corps of Engineers Permitted Projects that May Affect California Tiger Salamander and Three Endangered Plant Species on the Santa Rosa Plain, California” (Corps File Number 223420N) (Service 2007). To date, there have been no known detections of the salamander in this area. However, satellite imagery of the area suggests that PCEs are present within the area. In addition, the area is contiguous with other portions of the revised proposed critical habitat where breeding salamanders have been located since the development of the Santa Rosa Plain Conservation Strategy (Conservation Strategy).

(8) Any probable economic, national security, or other impacts of designating particular areas as critical habitat, and, in particular, any impacts on small entities (*e.g.*, small businesses or small governments), and the benefits of including or excluding areas that exhibit these impacts.

(9) Whether any specific areas being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. *See* the Areas Previously Considered For Exclusion Under Section 4(b)(2) of the Act section below and the Exclusions section of the proposed rule (74 FR 41662; August 18, 2009) for further discussion.

(10) Information on any Tribal lands that occur in areas being proposed as critical habitat, including whether these lands are held in fee or trust.

(11) 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.

(12) Information on any quantifiable economic costs or benefits of the proposed designation of critical habitat.

(13) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

If you submitted comments or information on the proposed rule (74 FR 41662; August 18, 2009) during the initial comment period from August 18, 2009, to October 19, 2009, please do not resubmit them. These comments are included in the public record for this rulemaking and we will fully consider them in the preparation of our final determination. Our final determination concerning the designation of critical habitat for the Sonoma County DPS of

the California tiger salamander will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

You may submit your comments and materials concerning this revised proposed rule, the DEA associated with this revised proposed critical habitat designation, and the amended required determinations by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hard copy that includes personal identifying information, 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. We will post all hard copy comments on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service (Service), Sacramento Fish and Wildlife Office (*see* the **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of the proposed designation of critical habitat (74 FR 41662) and the DEA on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0044, or by mail from the Sacramento Fish and Wildlife Office (*see* the **FOR FURTHER INFORMATION CONTACT** section).

## Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this revised proposed rule. Information on the taxonomy, distribution, life history, biology, and other information about the California tiger salamander is included in the Background section of the final rule to list the 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 DPS (65 FR 57242; September 21, 2000) and the Sonoma County DPS of the 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 the previous **Federal Register** documents was used in developing this revised proposed rule.

We now propose revisions to the proposed critical habitat unit for the Sonoma County DPS of the California tiger salamander (*see* Revisions to Proposed Critical Habitat section); accordingly, approximately 50,855 acres (ac) (20,580 hectares (ha)) in Sonoma County, California, meet the definition of critical habitat and comprise this single revised proposed critical habitat unit.

#### Previous Federal Actions

On August 4, 2004, we listed the Central California population of the California tiger salamander as a threatened DPS (69 FR 47211). At that time, we reclassified the California tiger salamander as threatened throughout its range, 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 regarding 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, and vacated the 2004 rule with regard to the Santa Barbara County and Sonoma County DPSs, reinstating their prior listing as endangered. We are making the necessary changes to the information included in the Code of Federal Regulations in the regulatory section of this rule, and we 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 ac (30,037 ha) of critical habitat, and on November 17, 2005, we published a revised proposed rule indicating we were considering approximately 21,298 ac for the final designation (70 FR 69717). In the 2005 revised proposed rule, we proposed critical habitat in areas within the range where, at that time, we had credible records of breeding, as reported by biologists that were permitted by the Service to survey for the salamander. On December 14, 2005, the Service published a final rule in the **Federal Register** (70 FR 74138), which identified four subunits of critical habitat, consisting of 17,418 ac (7,049 ha) located mostly west of the developed portions of Santa Rosa, Rohnert Park, and Cotati, in Sonoma County. Each one of the subunits represented a breeding center for the species. In the final rule, the Service excluded all proposed critical habitat, resulting in a designation of zero (0) 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 encompassed the same geographic area as the August 2005 proposal. The proposed rule, published on August 18, 2009 (74 FR 41662), complies with the May 5, 2009, stipulated agreement.

Section 3 of the Act defines critical habitat as the specific areas within the geographical 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 that may require special management considerations or protection, and specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary 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 critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

#### Revisions to Proposed Critical Habitat

In this notice, we are revising the proposed Unit 1 (Santa Rosa Plain Unit), as described in the August 2, 2005 (70 FR 44301), and August 18, 2009 (74 FR 41662), proposed rules. In the August 2, 2005, proposed critical habitat rule, we identified the historic and potential range of the species in Sonoma County, utilizing historic information and all known breeding and adult locality data available at that time. Subsequently, the November 17, 2005, proposed revised rule (70 FR 69717) limited the proposed critical habitat to areas containing essential physical and biological features that were located within 0.7 mile (mi) (1.1 kilometers (km)) of known breeding sites, thereby focusing the proposed critical habitat designation on providing sufficient breeding habitat and upland habitat to maintain and sustain existing salamanders in documented breeding sites. The November 2005 proposed revision did not include other areas within the Santa Rosa Plain that contained the essential physical and biological features. Based on the May 5, 2009, stipulated settlement described above, we published a proposed critical habitat rule on August 18, 2009 (74 FR 41662), that encompassed the same geographic areas as the original August 2, 2005, proposed rule (70 FR 44301).

The purpose of this revision to the proposed critical habitat is to better delineate the areas that contain the physical or biological features essential to the conservation of the species and that meet the definition of critical habitat for the California tiger salamander in Sonoma County. In general, this revision involves adjusting the boundaries of the proposed critical habitat Unit 1 to better reflect the occupied and potential range of the species as reflected in the Conservation Strategy mapping criteria (Conservation Strategy Team 2005a, Appendix E), that was developed subsequent to the

August 2, 2005, proposed rule (74 FR 41662). In addition, this revision considers recent documentation of adult salamanders with potential breeding habitat in additional areas within the proposed critical habitat, including the areas in the vicinity of Lichau Creek and Railroad Avenue (WRA Environmental Consultants 2005, pp. 3–8), and recent findings of California tiger salamanders at the Horn wetland mitigation bank (Monk 2010, pers. com.).

As a result of this revision, the area proposed for critical habitat in Unit 1 is 50,855 ac (20,580 ha), rather than the 74,223 ac (30,037 ha) identified in the August 18, 2009, proposed rule. The revised unit is now bordered on the west by the generalized eastern boundary of the 100-year Laguna de Santa Rosa floodplain, on the south by Pepper Road (northwest of Petaluma), on the east by the foothills of the Sonoma Mountains, and on the north by Windsor Creek. The northern boundary of the revised proposed critical habitat and the non-developed portions of the eastern boundary remain very close to the previously proposed boundaries. Other boundary adjustments are described below. A small addition to the southeastern edge of Unit 1 is within the geographic range occupied by the species at the time of listing and contains the physical or biological features essential to the conservation of the species. A revised map for the proposed critical habitat unit in Sonoma County is included in this notice.

The framers of the Conservation Strategy generally did not consider areas within the Federal Emergency Management Agency (FEMA) 100-year floodplain as areas suitable to support salamander breeding because seasonal pools within the 100-year floodplain are subject to flooding from perennial sources (such as the Laguna de Santa Rosa), and provide a high likelihood of supporting salamander predators in pools within the floodplain. In the Conservation Strategy, periodically flooded uplands within the 100-year floodplain may be considered salamander habitat if located near predator-free breeding pools (Conservation Strategy Team 2005a, Appendix E). Occurrence information from the California Natural Diversity Database (CNDDDB) (2010) indicates that, despite intensive focus on the salamander within the Santa Rosa Plain, to date no occurrences have been identified within the 100-year floodplain. The fact that this species has not been located within the floodplain may be due to the lack of suitable upland habitat within the floodplain during the wet season (Conservation

Strategy Team 2005b, Appendix L). The Service, therefore, has determined that most of the 100-year floodplain lacks the physical and biological features and is not essential for the conservation of the California tiger salamander.

To revise the proposed critical habitat boundary along the floodplain, we used a process that generalizes the floodplain boundary in order to smooth complex lines, removing the bulk of the floodplain from proposed critical habitat while retaining smaller areas along the eastern border of the floodplain. A segment of the 100-year floodplain that is located between the Stony Point Conservation Area (near Wilfred Avenue) and the Northwest Cotati Conservation Area (near Nahmens Road) is retained within the revised proposed critical habitat to reduce fragmentation of the northern and southern breeding concentrations within the unit by allowing for potential dispersal and genetic exchange. This retained segment is further bounded by Llano Road on the west and the western edge of the urban growth boundary of Cotati, California (near the northern terminus of Helman Lane), on the east.

Additionally, this revised proposed critical habitat unit no longer includes several areas of small remnant open parcels that occur between the eastern periphery of suburban Sebastopol and the western edge of the 100-year floodplain. We do not consider these areas essential for the conservation of the species because the undeveloped lands are small in size, are isolated from each other by development, are isolated by the 100-year floodplain and the Laguna de Santa Rosa from breeding habitat on the eastern side of the floodplain, are not known to be occupied, and do not contain the PCEs in the correct quantity and spatial arrangement to provide for the conservation of the species.

This revised proposed critical habitat designation no longer includes the urbanized centers of Santa Rosa, Bennett Valley, Rohnert Park, and Cotati. These urban centers consist almost exclusively of hardened, developed landscapes. The remnant natural habitat within these areas is limited to small, isolated parcels within a matrix of urban development. These areas have been removed in this revised proposal because developed areas (lands covered by buildings, pavement, and other structures) lack the physical or biological features essential to the conservation of the species according to section 3(5)(A) of the Act. We also do not consider the remnant natural habitat within these city centers as essential for the conservation of the salamander.

However, areas on the periphery of urban areas remain within the revised proposed critical habitat boundary. The scale of the map we prepared under the parameters for publication within the Code of Federal Regulations is not sufficient to reflect the exclusion of developed lands, while retaining open lands that provide the features essential to the conservation of the species.

Any such developed lands that have been left inside critical habitat boundaries shown on the maps of this revised proposed rule are excluded by text and are not proposed for designation as critical habitat because they either do not contain the physical or biological features essential to the species or are not considered essential for the species. Therefore, when the critical habitat is finalized, a Federal action involving these undesignated lands would not trigger a section 7 consultation, nor, with respect to critical habitat, would it require an analysis to determine adverse modification in these undesignated areas, unless the specific action would affect the physical or biological features essential to the conservation of the species in the adjacent designated critical habitat.

In the southernmost region of the Santa Rosa Plain, the critical habitat unit boundary has been revised as follows. In the vicinity of Lichau Creek and Railroad Avenue, additional acreage reflects new information on the presence of salamander breeding within the area. The area south of Pepper Road, along both sides of U.S. Highway 101, is not included in the revised proposed critical habitat because we do not currently consider this area to be essential to the conservation of the species. This area has been fragmented by industrial and residential development and roadways, including the major north-south interstate highway, U.S. Highway 101. More than 20 percent of the open land generally south of Pepper Road and west of U.S. Highway 101 is delineated as 100-year floodplain for the Petaluma River. As discussed above, we generally do not consider lands within the 100-year floodplain to contain suitable breeding habitat for the salamander. Suitable upland habitat may also be lacking during the wet season (Conservation Strategy Team 2005b, Appendix L). The floodplain fragments the remaining undeveloped land in this area. Although there is an anecdotal report from the 1990s of a California tiger salamander observation along Rainsville Road, we are not aware of confirmed observations of the California tiger salamander within this area.

### Areas Previously Considered for Exclusion Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. 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.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the December 14, 2005, final rule (70 FR 74138), we evaluated those lands determined to have essential features, in order to ascertain if any specific areas were appropriate for exemption or exclusion from critical habitat under sections 4(a)(3) and 4(b)(2) of the Act. On the basis of that evaluation, we determined that the benefits of excluding lands under appropriate management for the Sonoma County DPS of the California tiger salamander outweighed the benefits of their inclusion within critical habitat. Consequently, we excluded the entire proposed critical habitat for the Sonoma County DPS of the California tiger salamander under section 4(b)(2) of the Act, based in part on the expectation that the Conservation Strategy would be implemented. We determined that the Conservation Strategy would provide conservation benefits that would be superior to a critical habitat designation. We also determined that critical habitat designation might hinder the progress of the Conservation Strategy by discouraging the involvement of local jurisdictions and private landowners,

without providing any counterbalancing, proactive conservation benefit. However, at that time, we acknowledged the potential for revisiting the critical habitat designation should changed circumstances occur, such as unsuccessful finalization or implementation of the Conservation Strategy.

The Conservation Strategy Implementation Plan has not been developed or implemented by local agencies during the period since the publication of the December 14, 2005, final critical habitat rule (70 FR 74138). Therefore, at this time, we do not believe that the Conservation Strategy provides a sufficient basis for exclusion of the unit from critical habitat designation. Any exclusion of critical habitat based on potential economic costs will be presented in the final rule.

We are not proposing to exclude any areas from critical habitat at this time. In the final rule, we may consider exclusion of all or some of the Federated Indians of Graton Rancheria of California's 254-ac (103-ha) parcel of Tribal trust land that currently overlaps with proposed critical habitat. This potential exclusion would occur under section 4(b)(2) of the Act and by taking into consideration Secretarial Order 3206 involving American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We prepared a DEA (IEC 2010) to identify and analyze the potential economic impacts associated with this revised proposed critical habitat for the Sonoma County DPS of the California tiger salamander.

The DEA (made available with the publication of this notice) estimates the foreseeable economic impacts of this revised proposed critical habitat (IEC 2010). The economic analysis presented in the DEA uses the historical record to inform its assessment of potential future impacts of critical habitat. The analysis forecasts both baseline and incremental impacts likely to occur after the revised

proposed rule is finalized. The DEA identifies economic impacts to the following activities as a result of the designation of critical habitat for the Sonoma County DPS of the California tiger salamander: (1) Commercial and residential development, (2) transportation projects, and (3) utility and pipeline construction and maintenance activities. In addition, the DEA identifies potential economic impacts to agriculture and mitigation banks, but concludes that these activities are not likely to incur measurable economic impacts due to the designation of critical habitat. To provide an understanding of the potential economic impacts, this analysis determines the scope and scale of economic activities within the revised proposed critical habitat; identifies threats to California tiger salamander habitat associated with these economic activities; identifies conservation measures that may be implemented to avoid or minimize these threats; and to the extent feasible, quantifies the economic costs of these measures.

The DEA describes the economic impacts of all potential conservation efforts for the Sonoma County DPS of the California tiger salamander; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the revised proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections that are already in place for the species (such as protections under the Act and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the critical habitat designation for the Sonoma County DPS of the California tiger salamander. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis looks retrospectively at

baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the revised proposed critical habitat designation. For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the DEA (IEC 2010).

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Sonoma County DPS of the California tiger salamander over the next 25 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 25-year timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA 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 required to accomplish species and habitat protection. The DEA 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 government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on agriculture and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the critical habitat designation might unduly burden a particular group or economic sector.

Baseline economic impacts are those impacts that result from listing and other conservation efforts for the California tiger salamander. The DEA quantifies baseline costs due to the administrative cost of section 7 consultations. Additional baseline impacts stem from conservation measures applied to avoid jeopardy and take of California tiger salamanders as well as other conservation measures unrelated to the designation of critical habitat. Potential baseline impacts to development stem from two main sources: (1) Minimization and mitigation measures applied as part of

the section 404 permit process pursuant to the Clean Water Act; and (2) measures taken to avoid jeopardy of the California tiger salamander as part of section 7 consultation. Mitigation requirements are defined by the Service in its Programmatic consultation with the Corps (Service 2007) and are considered baseline costs.

Approximately 80 percent of future development projects are expected to require mitigation. Mitigation credits sold recently range from \$100,000 to \$130,000 per acre in this area.

The DEA revealed that all incremental impacts stem entirely from the administrative costs of section 7 consultation on commercial and residential development projects, and on transportation and utility activities. Significant uncertainty exists regarding whether the Service will require additional conservation measures specifically to avoid adverse modification of critical habitat in future section 7 consultations, and what such measures might entail. As a result, the analysis does not forecast incremental impacts due to such measures. The DEA estimates total potential incremental economic impacts in areas proposed as critical habitat over the next 25 years (2011 to 2035) to be approximately \$465,000 (\$39,900 annualized) in present value terms applying a 7 percent discount rate (IEC 2010, p. ES-4), and \$685,000 (\$39,300 annualized) in present value terms applying a 3 percent discount rate (IEC 2010, Appendix B). Impacts associated with section 7 consultations on development projects total \$441,000 (\$37,900 annualized), applying a 7 percent discount rate, and make up the largest portion of post-designation incremental impacts, accounting for 95 percent of the forecast incremental impacts. Incremental impacts to transportation represent the next largest source of incremental impacts, and total \$22,500 (applying a 7 percent discount rate), which represents 5 percent of total incremental impacts. The present value administrative cost of impacts associated with utility activities is \$1,290 (applying a 7 percent discount rate), and represents less than 1 percent of the overall incremental impacts.

The greatest incremental impacts are forecast to occur within the Santa Rosa Urban Growth Boundary (UGB) (\$209,000 present value impacts discounted at 7 percent), and make up 45 percent of the overall incremental impacts. The second largest incremental impacts are predicted to occur within the Windsor UGB, with present value impacts at \$136,000 (applying a 7 percent discount rate) comprising 29 percent of the overall incremental

impacts. Incremental impacts to Petaluma, which are forecast to incur the least amount of incremental impacts, are estimated at \$10,100 of present value impacts (discounted at 7 percent), and make up 2 percent of the overall incremental impacts. Only a small portion of the Petaluma UGB intersects with the revised proposed critical habitat. The DEA concerning the proposed critical habitat designation is available for review and comment (see ADDRESSES section).

#### Required Determinations—Amended

In our proposed rule published in the **Federal Register** on August 18, 2009 (74 FR 41662), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 12630 (Takings), the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and E.O. 13211 (Energy Supply, Distribution, or Use).

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2))), 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), as described below. 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. Based on our DEA for the revised proposed critical habitat, we provide our analysis for determining

whether the revised proposed designation would result in a significant economic impact on a substantial number of small entities. Based on comments we receive during the public comment period, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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. Private developers may be considered small entities if their annual income is not greater than \$33.5 million. 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 operations.

To determine if the revised proposed critical habitat for the Sonoma County DPS of the California tiger salamander would affect a substantial number of small entities, we consider the number of small entities affected by particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Sonoma County DPS of the California tiger salamander is present, Federal agencies already are required to consult with us under section 7 of the Act on

activities they fund, permit, or implement that may affect the species. Additionally, even in the absence of a Federal nexus, indirect incremental impacts may result if, for example, a city requests project modifications via the city's review under the California Environmental Quality Act (CEQA), due to the designation of critical habitat. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process on the Sonoma County DPS of the California tiger salamander, because it is listed as endangered under the Act.

In the DEA, we evaluate the potential economic effects on small business entities resulting from the implementation of conservation actions related to the revised proposed critical habitat for the Sonoma County DPS of the California tiger salamander. This analysis is based on the estimated incremental impacts associated with the proposed rulemaking as described in Chapters 2 through 4 of the DEA. The SBREFA analysis evaluates the potential for economic impacts related to several categories, including: (1) Residential and commercial development, (2) transportation activities, (3) utility activities, and (4) incremental administrative costs (IEC 2010, Appendix A). The DEA concludes that the proposed rulemaking may affect small entities (IEC 2010, Appendix A).

Incremental impacts from the administrative costs of section 7 consultations on critical habitat associated with residential and commercial development are expected for small entities. There are 1,911 businesses involved in development activities within Sonoma County and, of these, 1,896 are considered small businesses. Therefore, approximately 99 percent of all building construction companies in Sonoma County qualify as small entities. Because information on specific third parties that may be involved in future development consultations is lacking, the analysis conservatively assumes that all of the entities involved in future consultation efforts are small land subdivision companies. Because the DEA calculates impacts to small businesses at the County-wide scale, it likely overestimates the impacts associated with this revised proposed critical habitat, which only covers a portion of the County.

The DEA assumes annual revenues of up to \$33.5 million per small entity, and annualized impacts may be borne by all small land subdivision companies. Annualized impacts to the construction

industry (\$6,630 applying a 7 percent discount rate) are estimated to be significantly less than the annual revenues that could be generated by a single small building construction entity. If all impacts are borne by one single small construction company, the estimated annualized impact would represent less than 0.1 percent of the maximum total annual revenues (IEC 2010, Appendix A). No other incremental impacts attributed to transportation or utility activities are expected to be borne by entities that meet the definition of small entities (IEC 2010, Appendix A). Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the revised proposed critical habitat would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the revised proposed critical habitat for the Sonoma County DPS of the California tiger salamander would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Executive Order 13211—Energy Supply, Distribution, or Use*

Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Chapter 4 and Appendix A, the DEA finds that none of these criteria are relevant to this analysis (IEC 2010, Appendix A). The DEA concludes that incremental impacts to utilities are limited to the administrative cost of intra-Service consultation associated with a habitat conservation plan (HCP), which does not involve third parties. Any other impacts are expected to occur as a result of the listing of the California tiger salamander, regardless of the designation of critical habitat. Therefore, the rule will not affect energy supply, distribution, or use. Designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and a

Statement of Energy Effects is not required.

*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), E.O. 13175, and the Department of the 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.

The Federated Indians of Graton Rancheria in California is the only Tribe that may be affected by this proposed

revised critical habitat rule. Approximately 254 ac (103 ha) of Tribal lands could be designated. The Sacramento Fish and Wildlife Office has entered into discussion with the Tribe regarding the proposed revised designation in preparation of this revised rule. We will be contacting the Federated Indians of Graton Rancheria and requesting comments regarding the status of the California tiger salamander on lands under Tribal ownership and management.

**References Cited**

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at <http://www.regulations.gov>, or by contacting the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

**Author(s)**

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

**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 further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 74 FR 41662, August 18, 2009, as follows:

**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. The entry for “Salamander, California tiger” under “AMPHIBIANS” in the List of Endangered and Threatened Wildlife at § 17.11(h) is revised 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						
*	*	*	*	*	*	*	*
<b>AMPHIBIANS</b>							
Salamander, California tiger.	<i>Ambystoma californiense</i> .	U.S.A. (CA) .....	U.S.A. (CA—Santa Barbara County).	E	677E, 702	17.95(d)	NA
Salamander, California tiger.	<i>Ambystoma californiense</i> .	U.S.A. (CA) .....	U.S.A. (CA—Central California).	T	744	17.95(d)	17.43(c)
Salamander, California tiger.	<i>Ambystoma californiense</i> .	U.S.A. (CA) .....	U.S.A. (CA—Sonoma County).	E	729E, 734	17.95(d)	NA
*	*	*	*	*	*	*	*

3. Critical habitat for the California tiger salamander (*Ambystoma californiense*) in Sonoma County at § 17.95(d) is proposed to be amended by revising the heading, paragraph (53)(i), and the map at paragraph (56) to read as follows:

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

\* \* \* \* \*  
(d) *Amphibians*.  
\* \* \* \* \*

California Tiger Salamander (*Ambystoma californiense*)

\* \* \* \* \*

California Tiger Salamander (*Ambystoma californiense*) in Sonoma County

\* \* \* \* \*

(53) \* \* \*

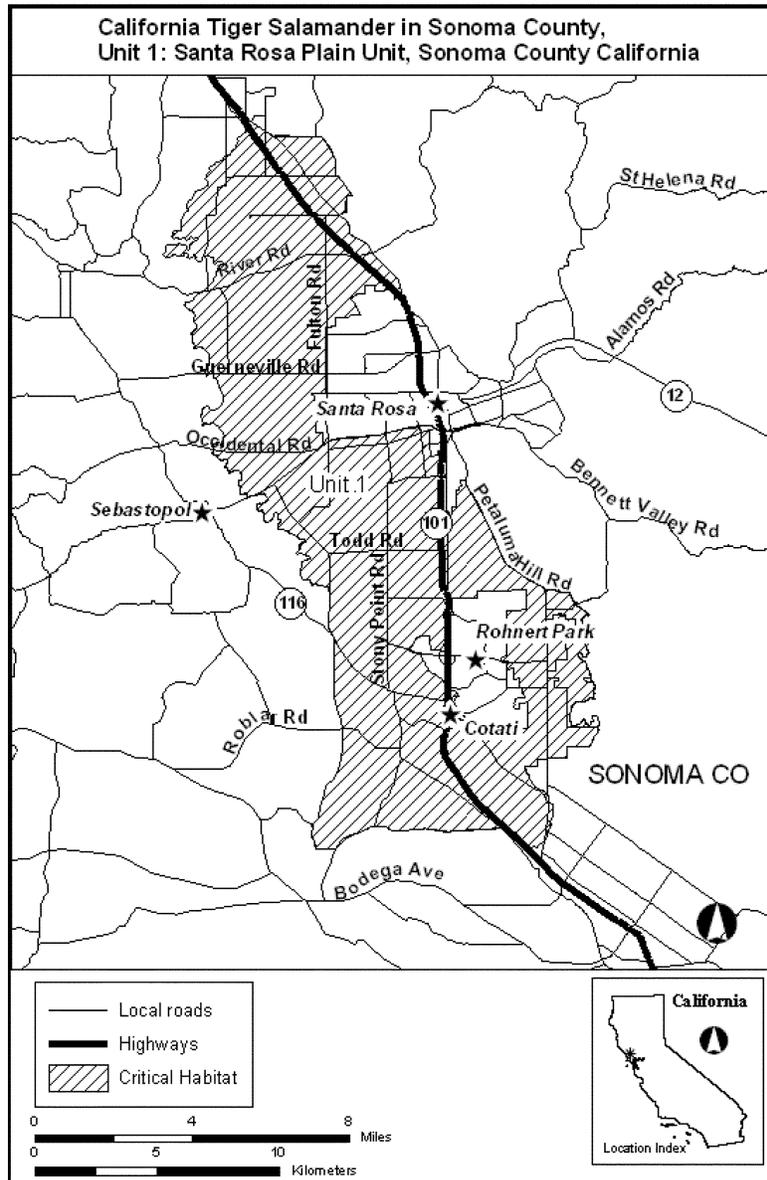
(i) Standing bodies of fresh water (including natural and manmade (e.g., stock)) ponds, vernal pools, and other

ephemeral or permanent water bodies that typically support inundation during winter and early spring and hold water for a minimum of 12 consecutive weeks in a year of average rainfall.

\* \* \* \* \*

(56) \* \* \*

BILLING CODE 4310-55-P



\* \* \* \* \*

Dated: December 30, 2010.

**Will Shafroth,**

*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

[FR Doc. 2011-843 Filed 1-14-11; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric  
Administration**

**50 CFR Part 300**

[Docket No. 110104009-1009-01]

RIN 0648-BA25

**Pacific Halibut Fisheries; Catch  
Sharing Plan**

**AGENCY:** National Marine Fisheries  
Service (NMFS), National Oceanic and  
Atmospheric Administration (NOAA),  
Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes to approve  
and implement changes to the Pacific  
Halibut Catch Sharing Plan (Plan) for

the International Pacific Halibut  
Commission's (IPHC or Commission)  
regulatory Area 2A off Washington,  
Oregon, and California (Area 2A). NMFS  
proposes to implement the portions of  
the Plan and management measures that  
are not implemented through the IPHC.  
This includes Tribal regulations and the  
sport fishery allocations and  
management measures for Area 2A.  
These actions are intended to enhance  
the conservation of Pacific halibut, to  
provide greater angler opportunity  
where available, and to protect  
overfished groundfish species from  
being incidentally caught in the halibut  
fisheries.

**DATES:** Comments on the proposed  
changes to the Plan and on the proposed  
domestic Area 2A halibut management