



# FEDERAL REGISTER

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Vol. 76

Wednesday,

No. 169

August 31, 2011

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Part III

Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Sonoma County Distinct Population Segment of California Tiger Salamander; Final Rule

## 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; Revised Designation of Critical Habitat for the Sonoma County Distinct Population Segment of California Tiger Salamander**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate revised critical habitat for the Sonoma County distinct population segment of the California tiger salamander (*Ambystoma californiense*) (Sonoma California tiger salamander) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 47,383 acres (19,175 hectares) of land are being designated as revised critical habitat for the Sonoma California tiger salamander.

**DATES:** This rule becomes effective on September 30, 2011.

**ADDRESSES:** This final rule and the associated final economic analysis are available on the Internet at <http://www.regulations.gov>. Comments and materials received, as well as supporting documentation used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W-2605, Sacramento, CA 95825; telephone 916-414-6600; facsimile 916-414-6713.

**FOR FURTHER INFORMATION CONTACT:** Susan Moore, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 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:****Background**

It is our intent to discuss in this final rule only those topics directly relevant to the development and designation of critical habitat for the Sonoma California tiger salamander under the Act (16 U.S.C. 1531 *et seq.*). For more information on the biology and ecology

of the California tiger salamander, refer to the final listing rule published in the **Federal Register** on March 19, 2003 (68 FR 13498). For information on the California tiger salamander critical habitat in Sonoma County, refer to the proposed rule to designate critical habitat for the Sonoma California tiger salamander published in the **Federal Register** on August 18, 2009 (74 FR 41662). We published information on the associated draft economic analysis for the proposed rule to designate critical habitat and changes to the proposed rule in the **Federal Register** on January 18, 2011 (76 FR 2863). A subsequent proposed change to include additional area in our proposal to designate critical habitat was published in the **Federal Register** on June 21, 2011 (76 FR 36068).

*Previous Federal Actions*

On March 19, 2003, we listed the Sonoma California tiger salamander as endangered (68 FR 13498; March 19, 2003). At that time, we determined that our budget for listing actions was not sufficient to complete concurrent designation of critical habitat for the species. 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 Sonoma California tiger salamander. 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 ac (8,519 ha) 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 California tiger salamander. On December 14, 2005, the Service published a final rule in the **Federal Register** (70 FR 74137), which identified four areas essential to the conservation of the species, 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 areas contained the physical or biological features essential to the conservation of the species and represented a breeding center for the species. However, based on a conservation strategy that was then under development by local governments and organizations, all the areas were excluded in the final rule, resulting in a designation of zero (0) ac (0 ha) 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 in which 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 that published in the **Federal Register** on August 18, 2009 (74 FR 41662), complies with the May 5, 2009, stipulated agreement. The Service also agreed in the May 5, 2009, stipulated settlement agreement to submit a final rule to the **Federal Register** on or before July 1, 2011. On June 9, 2011, the Court approved an extension to submit a final rule to the **Federal Register** on or before September 1, 2011. The extension was granted to accommodate a public comment period on modification of the proposed critical habitat based on information received during the previous January 18, 2011, public comment period.

On August 4, 2004, we listed the Central population of the California tiger salamander as a threatened Distinct Population Segment (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 on the reclassification of the Santa Barbara and Sonoma County DPSs of the California tiger salamander (*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 made the necessary changes to the

information included in the Code of Federal Regulations in the regulatory section of the January 18, 2011, revised proposed rule to designate critical habitat for the Sonoma California tiger salamander (76 FR 2863), and are finalizing the changes in this final rule.

### Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for the Sonoma California tiger salamander during three comment periods. The first comment period opened with the publication of the proposed rule in the **Federal Register** on August 18, 2009 (74 FR 41662), and closed on October 19, 2009. We also requested comments on the revised revision to our proposed critical habitat designation and associated draft economic analysis during a comment period that opened January 18, 2011, and closed on February 17, 2011. This public comment period was associated with the publication of the revised proposed rule in the **Federal Register** on January 18, 2011 (76 FR 2863). Lastly, we requested comments on a second revised proposed critical habitat designation during a comment period that opened June 21, 2011, and closed on July 5, 2011, and was associated with the publication of the second revised proposed rule in the **Federal Register** on June 21, 2011 (76 FR 36068). We did not receive any requests for a public hearing; however, we held a public informational meeting in Santa Rosa, California, on June 29, 2011. We contacted appropriate Federal, State, and local agencies; scientific organizations; tribes; and other interested parties and invited them to comment on the proposed rule and draft economic analysis during these comment periods.

During the first comment period, we received 53 comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received 35 comment letters addressing either the proposed critical habitat designation or the draft economic analysis. During the third comment period, we received 8 comment letters addressing the critical habitat designation and economic analysis. These totals do not include duplicate submissions. All substantive information provided during these comment periods has either been incorporated directly into this final determination or is addressed below.

#### Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR

34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from one peer reviewer.

We reviewed the comments received from the peer reviewer for substantive issues and new information regarding critical habitat for the Sonoma California tiger salamander. The peer reviewer generally concurred with our methods and conclusions and provided additional information with regard to known occurrences, clarifications, and suggestions to improve the final revised critical habitat rule, including suggestions about areas that the reviewer considered to be more important than others for critical habitat designation. The reviewer's comments are addressed in the following summary and incorporated into the final rule as appropriate.

#### Peer Reviewer Comments

*Comment 1:* The peer reviewer and other commenters noted that there are three known breeding sites in the Roblar Road area. The peer reviewer reviewed aerial photographs and performed reconnaissance visits to the area and observed several other potential breeding ponds in the vicinity of the Roblar Road breeding sites. The peer reviewer commented that the Roblar Road area likely consists of a metapopulation with multiple known breeding sites. The peer reviewer recommended that we include the area within a minimum of 1.3 miles (mi) (2 kilometers (km)) from each of the three Roblar breeding sites in designated critical habitat. The 1.3 mi area (2 km) is based on observations of California tiger salamanders from the nearest breeding ponds (Sweet 1998).

*Our Response:* In the June 21, 2011, revised proposed rule (76 FR 36068), we added 4,945 ac (2,001 ha) in the Roblar Road area to the revised critical habitat designation in response to the peer reviewer's recommendation that we include these recent breeding records, and we requested public comment on this addition to our revised proposal. The Roblar Road area supports the physical or biological features essential to the conservation of the species, is contiguous with habitat that was proposed as critical habitat in 2009 and 2011, and is within the geographical area that was considered occupied at the time of listing.

*Comment 2:* The peer reviewer noted that the northern extent of proposed critical habitat has no documented

occurrences and includes the area from the Sonoma County airport to the Windsor area (north of Guerneville Road). Other commenters also stated that areas north of Santa Rosa Creek and Mark West Creek do not support the Sonoma California tiger salamander. These commenters stated that this area has little value for the recovery of the species due to past and current urbanization and fragmentation of habitat, and this area would not likely support viable populations of the Sonoma California tiger salamander.

*Our Response:* We revised the critical habitat designation boundary in this final revised rule to remove infill parcels (isolated parcels surrounded by developed areas) within the town of Windsor, the town of Windsor Sphere of Influence, infill parcels east of the Sonoma County airport, and parcels on the east side of U.S. Highway 101 and north of Mark West Creek. The infill parcels are highly fragmented, are not known to be occupied by the Sonoma California tiger salamander, do not contain the physical or biological features essential to the conservation of the species, are not needed for the survival or recovery of the species, and are not otherwise essential for the conservation of the species. The areas north of Guerneville Road retained in this final critical habitat designation have the physical or biological features essential to conserve the Sonoma California tiger salamander, although some areas that are managed for intense agricultural activities (e.g., vineyards, row crops, orchards) may currently have only one primary constituent element (e.g., dispersal habitat). They may be restored to high-quality Sonoma California tiger salamander habitat that would also provide breeding and suitable upland habitat, which could then contribute to the recovery of the species. Therefore, the retained areas are essential for the conservation of the species because they comprise large, contiguous habitat that provides upland dispersal areas for the Sonoma California tiger salamander, they contain at least one of the essential features, and they have the potential for restoration to high-quality habitat.

*Comment 3:* The peer reviewer suggested that critical habitat should be extended south to the Rainsville Road area. The peer reviewer stated that this southern area contains the primary constituent elements (seasonal wetlands for breeding and grasslands for terrestrial refugia and dispersal). The peer reviewer also noted that he has a reliable anecdotal observation by an amateur herpetologist of an adult

Sonoma California tiger salamander in the Rainsville Road area.

*Our Response:* The area south of Pepper Road including the Rainsville Road area, along both sides of U.S. Highway 101, was removed in the January 18, 2011, revised proposed rule and is not included in this final critical habitat rule because we do not currently consider this area to be essential to the conservation of the species. Although there is an anecdotal report from the 1990s of a Sonoma California tiger salamander observation along Rainsville Road, we are not aware of confirmed observations of the Sonoma California tiger salamander within this area. This area has been fragmented by industrial and residential development and roadways, including the major north-south highway, U.S. Highway 101. More than 20 percent of the land generally south of Pepper Road and west of U.S. Highway 101 is delineated as 100-year floodplain for the Petaluma River and generally bisects the Rainsville Road area. We generally do not consider lands within the 100-year floodplain to contain suitable breeding habitat for the Sonoma California tiger salamander, and the floodplain fragments the remaining undeveloped land in this area. We do not find the remaining upland habitat to be adjacent or within dispersal distance from breeding ponds nor to be dispersal habitat between locations occupied by the Sonoma California tiger salamander. Therefore, we do not find the Rainsville Road area to contain the PCEs necessary for the Sonoma California tiger salamander.

#### Comments From States

Section 4(i) of the Act states, “the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency’s comments or petition.” No comments were received from the State regarding the proposal to revise critical habitat for the Sonoma California tiger salamander.

#### Public Comments

##### Unit Designation

*Comment 4:* Several comments included specific recommendations about how the critical habitat unit should be delineated, including comments regarding specific areas that should be included or removed from the final revised designation.

*Our Response:* We used the best scientific information available in determining the extent of the critical habitat boundaries, and we revised our final rule based on peer review and public comments received. We mapped

only those areas that contained the physical or biological features essential to conserve the Sonoma California tiger salamander. When determining critical habitat boundaries, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack the primary constituent elements for the Sonoma California tiger salamander. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures, and the land under them, that have been inadvertently left inside the critical habitat boundaries shown on the maps of this final rule, have been excluded by text in this rule, and are not designated as critical habitat. These developed and nonessential habitat areas do not contain the primary constituent elements and as such are not considered critical habitat. We did not exclude from critical habitat designation any areas based on the Conservation Strategy, because an implementation plan has not been completed by local governments and there are no regional Habitat Conservation Plans in this area.

*Comment 5:* Several comments pertained to areas on the east side of U.S. Highway 101 and north of Mountain View Avenue. Commenters noted that critical habitat designation should exclude undeveloped or partially developed parcels that are completely or predominately surrounded by developed areas, because such isolated vacant ‘infill’ parcels lack the requisite primary constituent elements for the Sonoma California tiger salamander, such parcels cannot support the isolated self-sustaining populations, and the parcels are inaccessible to the Sonoma California tiger salamander attempting to disperse from other areas.

*Our Response:* The critical habitat designation no longer includes the urbanized centers of Santa Rosa, Windsor, Bennett Valley, Rohnert Park, and Cotati, including some areas on the east side of U.S. Highway 101. These urban centers consist almost exclusively of hardened, developed landscapes. The remnant open space within these areas is limited to small, isolated parcels within a matrix of urban development. We do not consider the remnant open space within these city centers as essential for the conservation of the Sonoma California tiger salamander because these areas would not likely contribute to the survival or recovery of the species.

*Comment 6:* One commenter requested that four properties located in the easterly portion of the City of

Rohnert Park and the southeasterly portion of the County of Sonoma not be included in the final revised critical habitat designation based on past negative surveys for Sonoma California tiger salamander, e-mail communication from the Service confirming that proposed projects at these properties would not likely result in “take” of the Sonoma California tiger salamander, and information revealing that three of the properties are in the “no effect” category in the *Programmatic Biological Opinion for 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, 2007* (Programmatic Biological Opinion).

*Our Response:* The final revised critical habitat designation does not include the properties located in the easterly portion of the City of Rohnert Park and the southeasterly portion of the County of Sonoma, based on existing habitat conditions, fragmentation, and isolation. We determined that the area does not contain the physical or biological features and is not essential for the conservation of the species. For these reasons, the critical habitat unit boundary has been revised in this final revised designation to remove the general area south of the intersection of Martinez Drive and Petaluma Hill Road and south of Gladstone Way, Rohnert Park, California, and north of Roberts Ranch Road.

*Comment 7:* One commenter recommended that major water courses and areas within the 100-year floodplain should not be excluded from the revised critical habitat designation without a better understanding of the function and values of the 100-year floodplain to the Sonoma California tiger salamander.

*Our Response:* The 100-year floodplain does not likely support Sonoma California tiger salamander breeding because seasonal pools within the 100-year floodplain are subject to flooding from perennial sources (such as the Laguna de Santa Rosa wetlands), and the pools within the floodplain support predators of Sonoma California tiger salamander. Periodically flooded uplands within the 100-year floodplain may be considered Sonoma California tiger salamander habitat if located near predator-free breeding pools (Conservation Strategy Team 2005a, Appendix E). However, Sonoma California tiger salamander occurrence information from the California Natural Diversity Database (CNDDB) (2010) indicates that, despite intensive focus on the Sonoma California tiger salamander, to date no occurrences have

been identified within the 100-year floodplain. The Conservation Strategy notes the reason 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). However, some areas of the 100-year floodplain have been included as critical habitat in this final rule in order to maintain connectivity between breeding locations, and these areas are important for dispersal in some locations. The Service, therefore, has determined that most of the 100-year floodplain lacks the physical and biological features that are essential to the conservation of the Sonoma California tiger salamander, and the areas themselves are not considered essential to the conservation of the species. However, the 100-year floodplain areas may provide some benefits for connectivity, dispersal, foraging, and cover for the Sonoma California tiger salamander when the area is not flooded.

*Comment 8:* Several commenters stated that areas north of Santa Rosa Creek or north of Mark West Creek are inappropriate and not likely essential for designation of critical habitat based on the following:

(1) Sonoma California tiger salamanders have not been observed north of Mark West Creek. Mark West Creek is a geographic barrier between areas populated by the Sonoma California tiger salamander, and the only breeding site north of Santa Rosa Creek is a transplanted breeding site (*i.e.*, Alton Lane Mitigation Site), and

(2) These areas are not adequate to serve as Sonoma California tiger salamander mitigation habitat based on the Programmatic Biological Opinion and Conservation Strategy.

*Our Response:* In areas occupied at the time of listing, the designation of critical habitat is based on an evaluation of areas that contain the physical or biological features essential to the conservation of the Sonoma California tiger salamander. The Service is not aware of information that demonstrates that Mark West Creek is a geographic barrier to Sonoma California tiger salamander movement or information demonstrating that Sonoma California tiger salamanders do not or could not occupy areas north of Mark West Creek. The Programmatic Biological Opinion and the Conservation Strategy identify areas north of Mark West Creek as supporting potential habitat for the Sonoma California tiger salamander. A portion of the area north of Mark West Creek is included as revised critical

habitat in this final rule. This area is generally located west of Windsor Road, south of Shiloh Road, east of the 100-year floodplain and north of Mark West Creek. Specific infill parcels within the town of Windsor, east of the Sonoma County Airport, and parcels on the east side of U.S. Highway 101 north of Mark West Creek are not included in the final revised designation.

*Comment 9:* A commenter requested that Santa Rosa City Farm lands not be excluded from revised critical habitat based on the importance of the lands to the recovery of the Sonoma California tiger salamander. Another commenter requested that the Santa Rosa City Farm lands be excluded from the designation.

*Our Response:* The Santa Rosa City Farms were not excluded from revised critical habitat. Currently, known breeding occurs immediately adjacent to, and some known breeding occurs within, the Santa Rosa City Farm lands, making this an important area for restoration. We believe the Santa Rosa City Farm lands are important to the survival and recovery of the Sonoma California tiger salamander, and meet the criteria for and definition of critical habitat for this species. Restoration of the Santa Rosa City Farm lands and compatible land use may provide exceptional opportunities for the Sonoma California tiger salamander (which exhibits metapopulation characteristics) to be less susceptible to local extirpation. Because the Santa Rosa City Farm lands are contiguous to some of the largest known concentrations of Sonoma California tiger salamanders, there may exist opportunities for the Sonoma California tiger salamander to recover from land uses that are incompatible with the natural history of the species.

*Comment 10:* A commenter requested that the 75-ac (30-ha) parcel located within the City of Rohnert Park known as Sonoma Mountain Village (an area comprised of the former Hewlett Packard/Agilent Technology Campus) be removed from critical habitat designation. The commenter stated that the 75-ac (30-ha) parcel is frequently disturbed by regular farming activities, such as frequent discing, which the commenter noted precludes burrows and crevices necessary for Sonoma California tiger salamander aestivation. The commenter stated that frequent disturbances and the removal of cover turn the farmed area into poor upland habitat for the Sonoma California tiger salamander. The commenter also stated that the 75-ac (30-ha) parcel drains quickly and has no identified wetland areas suitable for Sonoma California tiger salamander breeding.

*Our Response:* The 75 ac (30 ha) of land known as Sonoma Mountain Village within the City of Rohnert Park, an area comprised of the former Hewlett Packard/Agilent Technology Campus, was surveyed for Sonoma California tiger salamanders in 2005. Adult Sonoma California tiger salamanders were captured. The site, although disturbed by farming and discing activities, is less than 0.5 mi (0.8 km) from known breeding habitat, supports upland habitat and upland dispersal habitat for Sonoma California tiger salamanders, and meets the criteria for and definition of critical habitat for this species.

*Comment 11:* One commenter requested that we work with the Federated Indians of Graton Rancheria (Tribe) in furtherance of the government-to-government relationship between the Tribe and the United States. The commenter further requested that we allow the Tribe to manage approximately 252 ac (102 ha) of reservation lands created on October 1, 2010, under a tribal management plan, rather than include the lands within designated critical habitat. The commenter noted that a 66-ac (27-ha) portion of the reservation will be developed as a resort hotel and casino, and that the development project has been addressed through an Environmental Impact Statement and associated Record of Decision. The commenter also noted that the National Indian Gaming Commission has completed consultation on the project with the Service, resulting in a completed Biological Opinion on the project. The commenter indicated that the Tribe is in the process of completing the tribal management plan.

*Our Response:* As part of our Federal responsibilities under the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), 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. We have worked with the Federated Indians of Graton Rancheria in regards to this designation of revised critical habitat and to further government-to-government relationships. We consulted with the National Indian Gaming

Commission (Commission) in 2009 for the proposed Graton Rancheria Casino and Hotel Project, City of Rohnert Park, Sonoma County, California and issued a biological opinion to the Commission (File Number 81420–2009–F–0336).

The proposed project entails 82 ac (33 ha) of a casino-hotel development, 170 ac (69 ha) of recycled water sprayfields, flood storage ponds, and open space. Approximately 87 ac (35 ha) are to be conserved off-site to benefit the Sonoma California tiger salamander. The 87 ac (35 ha) of off-site conservation is based on mitigation ratios described in the Conservation Strategy. The 87 ac (35 ha) consist of purchasing Sonoma California tiger salamander credits at a mitigation bank, or the purchase of land providing suitable habitat where Sonoma California tiger salamanders are known to occur, and protecting the land with a conservation easement. The establishment of an off-site preserve by the applicant, if chosen, must meet additional requirements as described in the biological opinion, such as third party management pursuant to a Service-approved resource management plan, performance monitoring, maintenance monitoring, compliance reporting, adaptive management planning, and a funding mechanism to assure long-term management and monitoring. The proposed action also includes development of a management plan for the 170 ac (69 ha) except those portions planned for use as treated wastewater retention ponds.

The Tribe has developed and finalized a management plan that provides for the long-term protection of species through adaptive management measures that preferentially conserve rare habitats and habitats known or likely to be occupied by the threatened and endangered species known to occur in the Santa Rosa Plain wetland or vernal pool habitats, including the Sonoma California tiger salamander. The Service reviewed the management plan and agrees that it provides for the conservation of the Sonoma California tiger salamander. We have determined that the benefits of exclusion under section 4(b)(2) of the Act exceed the benefits of including these lands within the critical habitat designation, and the Secretary has exercised his discretion to exclude approximately 252 ac (102 ha) of Graton Rancheria trust lands under section 4(b)(2) of the Act. See the Exclusions section below for more information regarding exclusion of these tribal lands.

*Comment 12:* One commenter noted that Secretarial Order 3206 involving American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the

Endangered Species Act, does not require the exclusion of tribal trust lands from critical habitat designation. The commenter noted that the Secretarial Order requires the Service to recognize “the contribution to be made by affected Indian tribes, throughout the process and prior to finalization and close of the public comment period, in the review of proposals to designate critical habitat and evaluate economic impacts of such proposals with implications for tribal trust resources or the exercise of tribal rights” (Secretarial Order 3206, Sec. 3(B)(3)). Further, the commenter noted that the Secretarial Order provides that the Service “shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands” (Secretarial Order 3206, Sec. 3(B)(4)).

*Our Response:* The commenter is correct in his description of Secretarial Order 3206. It further states that “Critical habitat shall not be designated in such areas unless it is determined essential to the conservation of the species.” (Secretarial Order 3206, Sec. 3(B)(4)) We have determined that the tribal trust lands are occupied with the physical or biological features essential to the conservation of the species. Therefore, we considered exclusion of tribal trust lands under section 4(b)(2) of the Act. As noted in our response to Comment 11 above, we are excluding approximately 252 ac (102 ha) of tribal trust lands under section 4(b)(2) of the Act from this final designation because we received a management plan that provides protection for the physical and biological features essential to the conservation of the Sonoma California tiger salamander, and because we have determined that the benefits of exclusion outweigh the benefits of inclusion for this parcel. See the Exclusions section of this final rule for more information.

*Comment 13:* One commenter noted that the Roblar Road area is in the Americano Estero watershed, while most of the proposed critical habitat is in the Santa Rosa Plain. The commenter suggested that any impacts to tiger salamanders in the Americano Estero watershed should be mitigated within the same watershed. The commenter also provided some information regarding the proposed development of a rock quarry in the area.

*Our Response:* Designation of critical habitat identifies the physical or biological features essential to the conservation of the species and does not evaluate impacts or suggest mitigation for specific projects. Under Section 7 or 10 of the Act, projects are evaluated on

an individual basis, and mitigation may occur if there are anticipated adverse effects of the project. The mitigation location is usually evaluated and determined on a case by case basis, however it is possible for mitigation to occur in a different watershed within the range of the Sonoma California tiger salamander.

*Comment 14:* One commenter requested that the Service review the location of the critical habitat boundary on the east side of U.S. Highway 101 in the vicinity of Cotati, Highway 116, Old Redwood Highway and Commerce Avenue, and consider using U.S. Highway 101 as the actual boundary due to the fact that the area currently included in the proposed critical habitat unit is a very small area that seems to be developed on all sides.

*Our Response:* The Service reviewed the area described, using aerial photography and available survey information. One or more primary constituent elements and confirmed observations of the Sonoma California tiger salamander occur within the area in question. For these reasons, we have determined that the area meets the definition of critical habitat for the California tiger salamander and should remain in this final revised designation.

#### Economic Analysis

*Comment 15:* One comment states that the draft economic analysis (DEA) is inadequate because it acknowledges that “significant uncertainty exists” over whether measures to avoid jeopardy of the species will also avoid adverse modification of critical habitat, but fails to quantify costs associated with measures recommended specifically to avoid adverse modification.

*Our Response:* The economic analysis focuses on estimating impacts to economic activities that are reasonably foreseeable. Given (a) The significant uncertainty regarding the types of projects that may lead to an adverse modification finding in the future and the conservation measures that may be requested to avoid adverse modification, and (b) the lack of precedent for the Service to request additional conservation measures to avoid jeopardy; the final economic analysis (FEA) does not forecast incremental impact stemming from conservation measures implemented to avoid adverse modification of critical habitat. The FEA acknowledges this uncertainty and explains why no incremental impacts are forecast in multiple places, including the “Key Sources of Uncertainty” section of the Executive Summary. A detailed description of

how the FEA estimates incremental impacts is presented in Section 3.3.

*Comment 16:* A number of comments state that the DEA is flawed because it fails to quantify costs associated with the designation such as costs of surveying for the salamander and purchasing mitigation credits.

*Our Response:* In areas where surveying occurs, the FEA considers the cost of surveying to be a baseline impact. Baseline impacts stem from protections afforded the species absent critical habitat. The methodology used to separately identify baseline and incremental impacts is discussed in Section 2.3 of the FEA. Language has been added to Section 2.3 of the FEA to clarify where surveying occurs and why the cost of surveying is considered a baseline impact. Similarly, the cost of purchasing mitigation credits is considered a baseline impact. Baseline impacts specific to development activities are discussed in detail in Section 3.2. Section 3.2 notes that a discussion of mitigation requirements is included “only to provide a qualitative description of potential baseline impacts of CTS conservation.”

*Comment 17:* One comment states that critical habitat designation could delay a planned development project, potentially making it unviable. If the project does not move forward, jobs could be lost, and the City’s ability to meet future housing obligations under the Regional Housing Needs Assessment could be compromised.

*Our Response:* As shown in Exhibit 2–2, the FEA assumes that critical habitat may result in additional administrative effort, such as staff time and costs, to address adverse modification in section 7 consultations. Depending on the type of section 7 consultation, the direct cost of this additional administrative effort for each consultation is expected to range from \$405 to \$9,025. As such, the analysis attempts to capture the increased costs associated with the increased complexity of consultations following critical habitat designation. While time delay associated with the need to consult can be considered an indirect, incremental impact of the designation, it is unlikely that the additional administrative effort required due to critical habitat designation would result in a measureable delay or cause a project to become unviable.

*Comment 18:* One comment states that the DEA makes no effort to describe the revenue or income profile of small building construction companies that may be affected by the critical habitat designation. The commenter suggests that the small business analysis

(Appendix A) be revised to include a comparison between the estimated costs of critical habitat designation and the approximate income or revenue of small building construction companies.

*Our Response:* Appendix A of the FEA has been revised to include a comparison between the estimated incremental impact to building construction companies and a range of average revenues for small building construction entities from the Risk Management Association. These data from the Risk Management Association are not available at the county-level, so national data are used. This analysis finds that if all incremental impacts to construction companies are borne by a single small construction company, the estimated annualized impacts would represent, on average, between 0.04 percent and 1.27 percent of annual revenues.

*Comment 19:* One comment states that the DEA only identifies building construction companies as small businesses that may experience significant economic impacts. The commenter points out that other industries, such as the vineyard and wine industry, could be significantly affected by the proposed rule.

*Our Response:* Appendix A of the FEA explains that incremental impacts to the transportation industry are forecast to be incurred by CALTRANS, a State agency that does not meet the definition of a small business. Similarly, incremental impacts to utilities are limited to the administrative cost of an intra-Service consultation that is borne solely by the Service. Potential impacts to other activities including agriculture and mitigation bank establishment are discussed in Chapter 4 of the FEA. No incremental impacts to these activities are forecast; therefore, small businesses in these industries are not expected to be affected. In particular, the section 7 consultation history contains no past consultations on agricultural conversion projects, such as vineyard conversion. Further, communications with the U.S. Army Corps Regulatory Division indicate that no section 404 permit requests for agricultural conversion projects have occurred in the recent past within the study area. Given the lack of precedent for an agricultural wetland conversion project, this analysis does not estimate the number of future agricultural wetland conversion projects or the incremental impacts stemming from the additional administrative cost of addressing adverse modification during section 7 consultation for such projects. A discussion of impacts to small businesses in the agriculture and mitigation bank establishment

industries has been added to Appendix A of the FEA.

#### **Summary of Changes From the 2009 Proposed Rule**

The following paragraphs provide specific information on the changes between the 2009 proposed rule and this final revised designation. First, we describe the changes that were made between the 2009 proposed rule (74 FR 41662) and the January 18, 2011, revised proposed rule (76 FR 2863). In the 2011 revision, we refined our critical habitat proposal to better reflect the occupied and potential range of the species as suggested in the Conservation Strategy mapping criteria (Conservation Strategy Team 2005a, Appendix E) and the Programmatic Biological Opinion. We also added area in the vicinity of Lichau Creek and Railroad Avenue, in the southernmost region of the Santa Rosa Plain, to reflect new information on the presence of Sonoma California tiger salamander breeding within the area.

Other areas that were removed in the revised proposed rule include 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 are not included in the final rule 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 open space within these city centers as essential for the conservation of the Sonoma California tiger salamander.

Most of the Laguna de Santa Rosa 100-year floodplain was removed in the revised proposed rule and is not included in this final revised designation, because we do not consider the area essential to the conservation of the species. In the Santa Rosa Plain area, the Federal Emergency Management Agency (FEMA) 100-year floodplain is generally not believed to support Sonoma California tiger salamander breeding because seasonal pools within the 100-year floodplain are subject to flooding from perennial sources (such as the Laguna de Santa Rosa), which leads to a high likelihood that pools within the floodplain will support Sonoma California tiger salamander predators. However, periodically flooded uplands within the 100-year floodplain may be considered Sonoma California tiger salamander habitat if these pools are

located near predator-free breeding pools (Conservation Strategy 2005a, Appendix E). Occurrence information from the California Natural Diversity Database (CNDDB) (2010) indicates that, despite intensive focus on the Sonoma California tiger salamander 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). We, therefore, have determined that most of the 100-year floodplain lacks the physical and biological features essential to the conservation of the Sonoma California tiger salamander and, therefore, does not meet the definition of critical habitat.

As noted above, the bulk of the floodplain is not included in this final critical habitat rule. 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 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, in the January 18, 2011, revised proposed rule we removed 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. These areas are not included in the final revised designation. We do not consider these areas essential to the conservation of the species because the undeveloped lands are small in size, are isolated from each other by development, are isolated from breeding habitat on the eastern side of the floodplain by the 100-year floodplain and the Laguna de Santa Rosa, and are not known to be occupied or contain the physical or biological features.

The area south of Pepper Road including the Rainsville Road area, along both sides of U.S. Highway 101, was removed in the January 18, 2011, revised proposed rule and is not included in this final critical habitat rule 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 highway, U.S. Highway 101. More than 20 percent of the land generally south of Pepper Road and west of U.S. Highway 101 is delineated as 100-year floodplain for the Petaluma River. We generally do not consider lands within the 100-year floodplain to contain suitable breeding habitat for the Sonoma California tiger salamander, and the floodplain fragments the remaining undeveloped land in this area. Although there is an anecdotal report from the 1990s of a Sonoma California tiger salamander observation along Rainsville Road, we are not aware of confirmed observations of the Sonoma California tiger salamander within this area.

On June 21, 2011 (76 FR 36068), we published an additional revised proposed rule to include 4,945 ac (2,001 ha) located in the general area of Roblar Road in the proposed critical habitat unit. This addition to the proposed critical habitat unit is within the area that was considered occupied at the time of listing. We added the Roblar Road area to the proposed designation and include it in the final designation, based on information we received during the public review process. Additional information used to determine the boundaries of the addition included aerial photographs, reconnaissance visits to the area, and observations of Sonoma California tiger salamander habitat.

Refinements that we've made to the proposed designation in this final rule to designate critical habitat include the removal of infill parcels within the town of Windsor and the town of Windsor Sphere of Influence, infill parcels east of the Sonoma County airport, and parcels on the east side of U.S. Highway 101 north of Mark West Creek. The removed parcels are highly fragmented by urban development, are not known to be occupied, do not contain the physical or biological features or is otherwise essential for the conservation of the species, and are not essential to the survival or recovery of the Sonoma California tiger salamander. A sliver of the eastern edge of the proposed critical habitat that is east of U.S. Highway 101 between Mark West Creek and the City of Santa Rosa has also been eliminated from this final designation. We do not consider this area essential to the conservation of the Sonoma California tiger salamander because it is a long linear strip of land confined by development, and is isolated from other areas containing the physical or biological features essential to the conservation of the species by a major four-lane highway that would be a significant barrier to dispersal.

Lastly, this final revised rule does not include the area east of Rohnert Park. We have determined that, even though the area contains some of the physical and biological features, this area is not essential to the conservation of the Sonoma California tiger salamander because this area is not known to be occupied and existing habitats are fragmented and isolated. We have concluded that the area east of Rohnert Park is not essential to the survival or recovery of the species. For these reasons, the critical habitat unit boundary is revised in this final designation to remove the area that is east of Rohnert Park, generally south of the line that extends from the northeastern edge of the City of Rohnert Park (in the immediate vicinity of Gladstone Way), through the intersection of Martinez Drive and Petaluma Hill Road, and generally north of Roberts Ranch Road.

## Critical Habitat

### *Background*

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

(1) 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:

(a) Essential to the conservation of the species and

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

(2) 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 transplantation, 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 requirement that Federal agencies

ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of 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) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner 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 physical and biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). We consider primary constituent elements to be the elements of physical and biological features within the species range that are essential to the conservation of the species. In the case of the Sonoma California tiger salamander, the primary constituent elements include those specific aquatic and upland habitats determined through use of our methodology and criteria as discussed below.

Under the Act, we can designate critical habitat in 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. We designate critical habitat in areas outside the geographical area

occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

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 dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325-326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air

temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1-3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Sonoma California tiger salamander that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change.

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, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. 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.

#### Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These 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 historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for the Sonoma California tiger salamander from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on August 18, 2009 (74 FR 41662), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on March 19, 2003 (68 FR 13498). We have determined that the Sonoma California tiger salamander requires the following physical and biological features.

The physical and biological features for the Sonoma population include:

1. Aquatic habitat;
2. Upland nonbreeding habitat with underground refugia; and
3. Dispersal habitat connecting occupied Sonoma California tiger salamander locations.

#### Aquatic Habitat

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 population breeding and for providing space, food, and cover necessary to sustain early life-history

stages of larval and juvenile Sonoma California tiger salamanders. The 12 consecutive-week time frame includes the onset of winter rains that initially fill pools or ponds and signal to adults to move to these areas for breeding. Spring rains maintain pool inundation, allowing larvae the time in the water that is needed to grow into metamorphosed juveniles so that they can then 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 California tiger salamander would not survive, continue to reproduce, and develop juveniles that grow into adult salamanders to complete their life cycles.

#### Upland Nonbreeding Habitat With Underground Refugia

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 Sonoma California tiger salamanders are primarily terrestrial. Adult Sonoma California tiger salamanders enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, Sonoma 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. Sonoma 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 Sonoma California tiger salamanders, because the small mammals construct burrows that are then used by Sonoma California tiger salamanders. Because Sonoma California tiger salamanders do not construct burrows of their own, without the continuing presence of small mammal burrows in upland habitats, Sonoma California tiger salamanders would not be able to survive.

#### Dispersal Habitat Connecting Occupied Sonoma California Tiger Salamander Locations

Dispersal habitat for this species is upland area adjacent to aquatic habitats, which provides connectivity among suitable Sonoma California tiger salamander aquatic breeding and upland nonbreeding habitats. Even though Sonoma California tiger salamanders can bypass many obstacles and do not require a particular type of habitat for dispersal, the areas connecting habitats with the essential aquatic and upland features need to be accessible (no physical or biological attributes that prevent access to adjacent areas) to function effectively as dispersal habitat. Agricultural lands, such as row crops, orchards, vineyards, and pastures, do not constitute barriers to the dispersal of Sonoma California tiger salamanders; however, a busy highway or freeway may constitute a barrier. The extent to which any attribute is a barrier is a function of the specific geography of the area and the extent to which the attribute limits salamander access to suitable aquatic and upland habitat.

Dispersal habitat is needed for the conservation of the Sonoma California tiger salamander. Protecting the ability of Sonoma California tiger salamanders to move freely across the landscape in search of suitable aquatic and upland habitats is essential for maintaining gene flow and for recolonization of sites where Sonoma California tiger salamanders may have 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 that the average female bred 1.4 times over her lifetime and produced 8.5 young that survived to metamorphosis, per reproductive effort. This reproduction results in approximately 12 metamorphic offspring over the lifetime of a female. In part, this low reproductive rate may be due to the extended time that it takes 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 appears that many individuals breed only once in their lifetime. This presumed low breeding rate combined with a hypothesized low survivorship of metamorphosed individuals, indicate that reproductive output may be only barely sufficient to maintain populations of California tiger salamanders.

Dispersal habitats help to preserve the population structure of the Sonoma California tiger salamander. The life history and ecology of the Sonoma California tiger salamander indicate that it is likely that this species has a metapopulation structure. A metapopulation is a set of populations within an area that are linked by immigration and emigration. Migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but may not be routine (Trenham 1998, p. 42; Trenham *et al.* 2001, p. 3519). Movement (dispersal) between areas containing suitable upland and aquatic habitats may be restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitat may be small and support small numbers of salamanders, local extirpation in these small areas may be common. The persistence of a metapopulation depends on the combined dynamics of local extinctions and the subsequent recolonization of areas through dispersal (Hanski and Gilpin 1991, pp. 7–9; Hanski 1994, p. 151).

#### Primary Constituent Elements for the Sonoma California Tiger Salamander

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of Sonoma California tiger salamanders in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements (PCEs) to be the elements of physical and biological features that provide for the species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the PCEs specific to Sonoma California tiger salamanders 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 and early spring, and hold water for a minimum of 12 consecutive weeks in a year of average rainfall.

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

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

With this designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the primary constituent elements on the landscape sufficient to support the life-history processes of the species. The specific area designated as critical habitat in this final designation is currently occupied by the Sonoma California tiger salamander and contains the physical and biological features essential to the conservation of the species.

#### *Special Management Considerations or Protection*

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and which may require special management considerations or protection. Within the single unit proposed as critical habitat in this final designation, we find that the features essential to the conservation of the Sonoma California tiger salamander may require special management considerations or protection to ameliorate the threats outlined below:

1. Activities that would threaten the suitability of Sonoma California tiger salamander breeding ponds, such as introduction of nonnative predators, including nonnative bullfrogs and nonnative fish;

2. Activities that could disturb or disrupt the hydrology of aquatic breeding habitat, such as heavy equipment operation (*e.g.*, bulldozers or deep ripping), ground disturbance (*e.g.*, discing), maintenance projects (*e.g.*, pipelines, roads, power lines), land conversion to vineyards, off-road travel, or recreation;

3. Activities that impair the water quality of aquatic breeding habitat (*e.g.*, pesticides, increased nitrogen input through recycled water or dairy operations);

4. Activities that would reduce small mammal populations or their burrows to the point that there are insufficient underground refugia, which are used by Sonoma California tiger salamanders for foraging, protection from predators, and shelter from the elements (*e.g.*, discing, deep ripping, land conversion to vineyards, rodent control in existing vineyards); and

5. Activities that create barriers impassable by salamanders, or those activities that increase mortality in upland dispersal habitat between extant breeding occurrences.

In the case of the Sonoma California tiger salamander, natural repopulation of sites where the Sonoma California tiger salamander has been extirpated is likely not possible without human assistance and landowner cooperation. Examples of such proactive activities that benefit the Sonoma 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 as well (Wilcove and Lee 2004, p. 639; Shogren *et al.* 1999, p. 1260; Wilcove and Chen 1998, p. 1407; Wilcove *et al.* 1996, pp. 3–5).

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

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating critical habitat only in areas within the geographical area occupied by the species at the time of listing in 2003. We are not designating any areas outside the geographical area occupied by the species because the occupied area is sufficient for the conservation of the species.

In the 2009 proposed rule, we reviewed the overall approach to the conservation of the Sonoma 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 Sonoma California tiger salamander on historical and current range of the species, as well as the Conservation Strategy. Historical records for the species and its habitat have been documented throughout the Santa Rosa Plain and into the Petaluma

River watershed. 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 historical and current habitat as well as land use patterns.

We 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 Sonoma California tiger salamander, and contain the necessary PCEs (see Primary Constituent Elements for the Sonoma California Tiger Salamander, above).

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

The critical habitat unit in this final designation 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 Sonoma Santa Rosa Plain Conservation Strategy California tiger salamander polygon as identified in the 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 not containing PCEs (see Primary Constituent Elements for the Sonoma California Tiger Salamander) in this final designation.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack

physical and biological features for the Sonoma California tiger salamander. The scale of the maps 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 final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features in the adjacent critical habitat.

We are designating as critical habitat lands that we have determined were occupied at the time of listing and contain sufficient physical and biological features to support life-history processes essential for the conservation of the Sonoma California tiger salamander. Furthermore, we have determined that the areas we are designating as critical habitat in this final rule are essential for the conservation of the species.

#### Final Critical Habitat Designation

We are designating a single unit as critical habitat for the Sonoma California tiger salamander. The critical habitat area described below constitutes our best assessment at this time of the area that meets the definition of critical habitat. The single unit (Santa Rosa Plain Unit) is within the geographical area occupied at the time of listing.

##### Santa Rosa Plain Unit

This unit is located on the Santa Rosa Plain in central Sonoma County and contains approximately 47,383 ac (19,175 ha), which includes 745 ac (301 ha) of State lands, 744 ac (301 ha) of city lands, 498 ac (202 ha) of county lands, 9 ac (4 ha) of individually owned tribal trust land, and 45,387 ac (18,367 ha) of private lands. No Federal lands are included in this proposed unit. The unit is partially bordered on the west by the generalized eastern boundary of the 100-year Laguna de Santa Rosa floodplain, on the southwest by Hensley Road, on the south by Pepper Road (northwest of Petaluma), on the east generally by and near Petaluma Hill Road or by the urban centers of Santa Rosa and Rohnert Park, and on the north by the Town of Windsor.

This unit is characterized by vernal pools, seasonal wetlands, and associated grassland habitat. This unit contains the physical and biological features essential to the conservation of the

Sonoma California tiger salamander, and is within the geographical area occupied at the time of listing. The critical habitat unit supports vernal pool complexes and manmade ponds that are currently known to support breeding Sonoma California tiger salamanders (PCE 1), upland habitats with underground refugia (PCE 2), and upland dispersal habitat allowing movement between occupied sites (PCE 3). 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 included within the final designation to prevent fragmentation of the northern and southern breeding concentrations within the unit, by allowing for potential dispersal and genetic exchange.

The physical and biological features essential to the conservation of the Sonoma California tiger salamander may require special management considerations or protection to minimize impacts from nonnative predators on otherwise suitable breeding habitat, 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). Primary threats to the Sonoma California tiger salamander include habitat destruction, degradation, and fragmentation. Secondary threats include predation and competition from introduced exotic species, possible commercial overutilization, disease, hybridization with nonnative salamanders, various chemical contaminants, road-crossing mortality, and rodent control operations. The Sonoma California tiger salamander is also vulnerable to chance environmental or demographic events (to which small populations are particularly vulnerable). The combination of the Sonoma California tiger salamander biology and its specific habitat requirements makes this animal highly susceptible to random events, such as drought or disease. Such events are not usually a concern until the number of breeding sites, refugia habitat, or geographic distribution become severely limited, as is the case with the Sonoma California tiger salamander.

General land use in the unit includes urban and rural development, which has taken place for over 100 years in this area. For the past 25 years, urban growth has encroached into areas

inhabited by the Sonoma California tiger salamander. Voters in the cities of Cotati, Rohnert Park, and Santa Rosa have established urban growth boundaries for their communities. This is intended to accomplish the goal of city-centered growth, resulting in rural and agricultural land uses being maintained between the urbanized areas. Therefore, it can be reasonably expected that rural land uses will continue into the foreseeable future. There are also acreages of publicly owned property and preserves located in the Santa Rosa Plain, which will further protect against development. Some of the areas within these urban growth boundaries, however, include lands inhabited by Sonoma California tiger salamanders. Agricultural practices, including discing, have also disturbed seasonal wetlands and upland habitat on the Santa Rosa Plain. However, some agricultural practices, such as grazed pasture, have protected habitat from intensive development.

Conservation planning efforts for the Sonoma California tiger salamander include the development of the Conservation Strategy by the Conservation Strategy Team, which was made up of representatives of government agencies and interested parties. The Conservation Strategy identifies specific areas that are likely to contribute the most for the conservation, survival, and recovery of the Sonoma California tiger salamander. There are eight conservation areas and one Southwest Santa Rosa Preserve System that are important to the long-term survival and recovery of the Sonoma California tiger salamander. The purpose of the conservation areas is to ensure that preservation occurs throughout the range of the Sonoma California tiger salamander. The designation of conservation areas is based upon the following factors: (1) Known distribution of Sonoma California tiger salamander, (2) presence of suitable Sonoma California tiger salamander habitat, (3) presence of large blocks of natural or restorable land, and (4) adjacency to existing preserves. These areas are essential for the Sonoma California tiger salamander, support the critical habitat primary constituent elements, and encompass the majority of all known occurrences of the Sonoma California tiger salamander. The critical habitat unit is larger than the conservation areas described and provides for potential dispersal and expansion opportunities of local Sonoma California tiger salamander populations, and the critical habitat unit

includes areas that may be restored from incompatible land management.

Although the Conservation Strategy was drafted in 2005, to date, local governmental agencies have not yet been able to complete the implementing ordinances. However, the Service has incorporated many of the recommendations and concepts of the Conservation Strategy in the Programmatic Biological Opinion to benefit the Sonoma California tiger salamander.

Several conservation and mitigation banks have been established within the areas identified for conservation, and many are protected by a conservation easement or are owned by the California Department of Fish and Game. Additionally, the banks are all managed to benefit the Sonoma California tiger salamander.

In the January 18, 2011, revised proposed rule (76 FR 2863), we indicated that in the final rule we may consider exclusion of all or some of the Federated Indians of Graton Rancheria of California's 252-ac (102-ha) parcel of tribal trust land that overlapped proposed critical habitat. We noted the potential exclusion would occur under section 4(b)(2) of the Act. We are now excluding the 252-ac (102-ha) parcel under section 4(b)(2) of the Act. Further discussion is provided below in the section *Exclusions Based on Other Relevant Impacts*.

### Effects of Critical Habitat Designation

#### Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory 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 continue to serve its intended conservation role for the species.

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. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require 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 the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 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, or 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 and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the

continued existence of the listed species and/or avoid the likelihood of 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 sometimes may need to request reinstatement 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.

#### *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. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Sonoma California tiger salamander. As discussed above, the role of critical habitat is to support 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.

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

(1) Actions that would compromise the function of vernal pools, swales, ponds (natural and manmade), and other seasonal wetlands as described in

the Primary Constituent Elements for the Sonoma California Tiger Salamander section (see PCE 1). Such activities could include, but are not limited to, constructing new structures, vineyards, and roads; discing; grading; and activities resulting in water diversion. These activities could destroy Sonoma California tiger salamander breeding sites, alter the hydrological regime necessary for successful larval metamorphosis, and eliminate or reduce the habitat necessary for the growth and reproduction of the Sonoma California tiger salamander.

(2) Actions that would significantly affect water quality, chemistry, or temperature. Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or heated effluents into the surface water or connected ground water. These activities could alter water conditions to levels that are beyond the tolerances of one or more life stages of the Sonoma California tiger salamander and could thereby result in direct or cumulative adverse effects.

(3) 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 Sonoma California tiger salamanders from breeding sites to upland habitat, or vice versa, due to barriers to movement, including 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.

(4) Actions that would significantly compromise upland habitat function and value that provides food, cover or dispersal opportunities for the Sonoma California tiger salamander. Such activities could include, but are not limited to, use of rodenticides or insecticides, discing, deep ripping, and grading. These activities could eliminate or reduce the availability of subsurface refugia, or could reduce or eliminate the prey species required for the survival of adult and juvenile Sonoma California tiger salamanders.

#### **Exemptions**

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

The Sikes Act Improvement Amendment 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 resources 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:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) 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, we are not exempting lands from this final designation of critical habitat for the Sonoma California tiger salamander pursuant to section 4(a)(3)(B)(i) of the Act.

#### **Exclusions**

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to 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 statute on its face, as well as the legislative history, are 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 the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would 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; the educational benefits of mapping critical habitat for recovery of the listed species; and any benefits that may result from a 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 that provides equal to or more conservation than a critical habitat designation would provide.

In the case of the Sonoma California tiger salamander, the benefits of critical habitat include public awareness of Sonoma California tiger salamander presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for the Sonoma California tiger salamander due to the protection from adverse modification or destruction of critical habitat. Since the Sonoma California tiger salamander was listed in 2003, numerous projects on privately owned lands have had a Federal nexus that triggered

consultation under section 7 of the Act. Since completion of the Programmatic Biological Opinion, permitted projects have compensated for effects to Sonoma California tiger salamanders resulting in conservation for the Sonoma California tiger salamander.

When we evaluate the value of a conservation plan in considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a conservation plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the benefits of inclusion and the benefits of exclusion to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. The Secretary has determined to exercise his discretion to exclude approximately 252 ac (102 ha) of tribal trust lands belonging to the Federated Indians of the Graton Rancheria (Tribe) from critical habitat designation for the Sonoma California tiger salamander. These lands are excluded because the Secretary determined that:

(1) The conservation value of the lands and essential features contained therein will be preserved for the foreseeable future by existing or future protective actions;

(2) It is appropriate for exclusion under the "other relevant factor" provisions of section 4(b)(2) of the Act, as the benefits of excluding these lands outweigh the benefit of including these lands in the designation, and exclusion will not lead to the extinction of the species; and

(3) The exclusion will foster continuation, strengthening, and encouragement of partnerships.

We take into consideration our partnership and existing conservation actions that the Tribe has implemented or are currently implementing when conducting our analysis under section 4(b)(2) of the Act in this final critical habitat designation. We also take into consideration conservation actions that are planned as part of our on-going commitment to the government-to-government relationship with tribes. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat based on economic or other relevant impacts if the Secretary determines that the benefits of such exclusion outweigh the benefits of designating the area as critical habitat. However, an exclusion cannot occur if it will result in the extinction of the species concerned. For further explanation of the exclusion of approximately 252 ac (102 ha) of tribal trust lands belonging to the Federated Indians of the Graton Rancheria see "Exclusions Based on Other Relevant Impacts" section below.

#### 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 prepared a draft economic analysis of the proposed critical habitat designation and related factors (IEC 2010). The draft economic analysis, dated December 3, 2010, was made available for public review and comment from January 18, 2011, through February 17, 2011 (76 FR 2863) and again from June 21, 2011, through July 5, 2011 (76 FR 36068). Following the close of the two comment periods, a final economic analysis (dated July 27, 2011) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEC 2011). In the final economic analysis, an addendum covers the potential economic impacts of including the Roblar Road addition in the final critical habitat designation.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the Sonoma California tiger salamander. Some of these costs will likely be incurred regardless of whether we designate critical habitat; these are baseline costs. The economic impact of the final critical habitat designation is analyzed by comparing both "with critical habitat" and "without critical habitat"

scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing 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 designation of critical habitat for the species. 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 consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA 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 FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the

designation might unduly burden a particular group or economic sector. Finally, the FEA looks qualitatively at costs that have been incurred since 2003 (year of the species’ listing) (68 FR 13498; March 19, 2003), and considers those costs that may occur in the 25 years following the designation of critical habitat, which has been 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 FEA quantifies economic impacts of the Sonoma California tiger salamander conservation efforts associated with the following categories of activity: (1) Commercial and residential development, (2) transportation projects, and (3) utility and pipeline construction and maintenance activities. In addition, the FEA identifies potential economic impacts to agriculture and mitigation banks, but concludes that these activities are not likely to incur measurable economic impacts as a result of the designation of critical habitat.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation, and the incremental impacts stem entirely from the administrative cost of Section 7 consultation. Consequently, we have determined not to exert our discretion to exclude any areas from this designation of critical habitat for the Sonoma California tiger salamander based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Sacramento Fish and Wildlife Office (see ADDRESSES) or by downloading from the Internet at <http://www.regulations.gov>.

**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 where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the Sonoma California tiger salamander are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exerting his discretion to exclude any areas from this final designation 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.

Table 1 below provides approximate areas of lands that meet the definition of critical habitat, but are excluded under section 4(b)(2) of the Act from this final critical habitat rule.

TABLE 1—EXEMPTIONS AND AREAS EXCLUDED BY CRITICAL HABITAT UNIT IN THIS FINAL DESIGNATION

| Unit                   | Specific area   | Basis for exclusion/exemption   | Areas meeting the definition of critical habitat in acres (hectares) | Areas exempted or excluded in acres (hectares) |
|------------------------|---|---|--|--|
| Santa Rosa Plain ..... | Lands Owned and Managed by the Federated Indians of Graton Rancheria. | Section 4(b)(2) of the Act; Graton Rancheria Natural Resources Management Plan. | 252 ac (102 ha) ..   | 252 ac (102 ha).                               |

**Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships**

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection for the species and features essential to its conservation than that provided by critical habitat designation;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future,

based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology and that these measures will be effective in conserving the species.

We believe that the Graton Rancheria Natural Resources Management Plan

fulfills the above criteria, and are excluding non-Federal lands covered by this plan that provide for the conservation of the Sonoma California tiger salamander.

#### *Graton Rancheria Natural Resources Management Plan*

The Graton Rancheria Natural Resources Management Plan (NRMP) covers 252 ac (102 ha) that are tribal trust lands (Reservation) belonging to the Federated Indians of Graton Rancheria. The NRMP was finalized in March 2011 and will be implemented through tribal ordinances. The NRMP codifies the protections afforded in the 2009 *Biological Opinion on the Proposed Graton Rancheria Casino and Hotel Project, City of Rohnert Park, Sonoma County, California* (Graton Biological Opinion (Service File #81420–2009–F–0336)). Approximately 82 ac (33 ha) in the northeastern and central portion of the Reservation will be developed as a casino with a hotel and supporting facilities and infrastructure, and this area will be compensated for by conserving additional lands for the Sonoma California tiger salamander off-site of the project area as identified in the Graton Biological Opinion and the NRMP (Analytical Environmental Services 2011).

The remaining 170-ac (69-ha) southern portion of the Reservation is located primarily within the 100-year floodplain of the Laguna de Santa Rosa and may provide dispersal habitat for the Sonoma California tiger salamander during times when the area is not flooded. The NRMP provides for the long-term protection of the species through adaptive management measures that preferentially conserve rare habitats and habitats known or likely to be occupied by threatened and endangered species known to occur in the Santa Rosa Plain wetland or vernal pool habitats, including the Sonoma California tiger salamander, and four listed plants: Sonoma sunshine, Burke's goldfields, many-flowered navarretia, and Sebastopol meadowfoam. The NRMP also provides for the long-term protection of the Sonoma California tiger salamander by conserving lands in perpetuity to compensate for loss of habitat associated with development, by applying mitigation ratios equivalent to those listed in the biological opinion. These lands will not be developed and will be managed as open space in perpetuity under the NRMP. Management of the 170 ac (69 ha) will focus on techniques including mowing and livestock grazing to maintain Sonoma California tiger salamander

wetland, upland, and dispersal habitat (Analytical Environmental Services 2011). The 170 ac (69 ha) is described as a holding area. Land within the holding area may be converted to developed areas or preservation areas through the implementation of the guidelines of the NRMP and specific Tribal action. Preservation areas are defined as areas protected and actively managed as sensitive biological habitat for the long-term.

All of the approximately 252 ac (102 ha) of tribal trust lands that we are excluding are within the Santa Rosa Plain Unit.

#### Benefits of Inclusion

The principle benefit of including an area in a critical habitat designation is the requirement of Federal agencies to ensure that actions that they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of any designated critical habitat, which is the regulatory standard of section 7(a)(2) of the Act under which consultation is completed. Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying, or adversely modifying, critical habitat. Federal agencies must also consult with us on actions that may affect a listed species, and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species (including the Sonoma California tiger salamander), and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory standard is different, as the jeopardy analysis investigates the action's impact to survival and recovery of the species, while the adverse modification analysis investigates the action's effects to the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone. Critical habitat may provide a regulatory benefit for the Sonoma California tiger salamander when there is a Federal nexus present for a project that might adversely modify critical habitat.

The consultation provisions under section 7(a) of the Act constitute the regulatory benefits of designating lands

as critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Critical habitat may provide a regulatory benefit for the Sonoma California tiger salamander when there is a Federal nexus present for a project that might adversely modify critical habitat. With respect to the Graton Rancheria land, we expect development projects within the Reservation to require a section 404 permit under the Clean Water Act from the Army Corps of Engineers and a permit from the National Indian Gaming Commission. Therefore, critical habitat designation in the Santa Rosa Plain Unit would provide an additional regulatory benefit to the conservation of the Sonoma California tiger salamander by prohibiting adverse modification of habitat essential for the conservation of this species.

As discussed above, the NRMP provides beneficial protection of Sonoma California tiger salamander habitat that is considered necessary for the survival and recovery of the species. Therefore, for activities covered under the NRMP, we believe that protections provided by the designation of critical habitat will be redundant with protections provided by the NRMP, at least in conserved areas. However, the NRMP does not prohibit spray irrigation or development from occurring in areas that have not yet been conserved in a preservation area within the Reservation, as defined in the NRMP. These threats are significant and ongoing within the range of the Sonoma California tiger salamander in habitat that has not been conserved and managed to benefit the species.

Another possible benefit of including lands in critical habitat is public education regarding the potential conservation value of an area that may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Sonoma California tiger salamander and its habitat that reaches a wide audience, including parties engaged in conservation activities, is valuable. The inclusion of lands in the Sonoma California tiger salamander critical habitat designation that are owned by or under the jurisdiction of the Reservation could be beneficial to the species, because while the NRMP establishes conservation goals for the Sonoma California tiger salamander and identifies criteria for identifying habitat to be conserved, the critical habitat designation specifically identifies those lands essential to the conservation of the species and which may require

special management considerations or protection. The process of proposing critical habitat provided an opportunity for peer review and public comment on habitat we determined meets the definition of critical habitat. This process is valuable to landowners and managers in prioritizing conservation and management of identified areas. Information on the Sonoma California tiger salamander and its habitat has also been provided to the public in the past through meetings, educational materials provided by the local jurisdictions, and recommendations provided in the Conservation Strategy. In general, we believe the designation of critical habitat for the Sonoma California tiger salamander will provide additional information for the public concerning the importance of essential habitat that has not already been available.

In summary, we believe that educational benefits are likely realized when any information about the Sonoma California tiger salamander and its habitat reaches a wide audience. The educational benefits of critical habitat designation on the Reservation lands may not be significant due to extensive past outreach and ongoing conservation efforts such as the listing of Sonoma California tiger salamander as endangered in 2003, the development and implementation of the Conservation Strategy, and the Programmatic Biological Opinion. And inclusion would enable an evaluation of adverse effects of spray irrigation or development to critical habitat in areas that have not yet been conserved in a preservation area within the Reservation.

#### Benefits of Exclusion

We believe the following benefits would be realized by forgoing designation of critical habitat for the Sonoma California tiger salamander on lands covered by the NRMP. These benefits include allowing for continued meaningful collaboration and effective working relationships with the Tribe to promote conservation of the Sonoma California tiger salamander and its habitat.

We acknowledge our unique and distinctive Federal tribal trust responsibility and obligation toward the Federated Indians of Graton Rancheria and their reservation lands, as well as their tribal sovereignty. We believe the exclusion of reservation lands from critical habitat will help preserve the partnership we have developed with the Tribe, reinforce those relationships we are building with other tribes, and foster future partnerships and development of future management plans with both

Federated Indians of Graton Rancheria and other tribes. Therefore, excluding tribal reservation lands from critical habitat provides the significant benefit of maintaining and strengthening our existing conservation partnership and fostering new tribal partnerships. The Tribe has developed a NRMP which provides specific protection and management for the Sonoma California tiger salamander and for the physical and biological features essential to the conservation of the species, in most respects equal to or better than the designation of critical habitat would provide. Exclusion of the lands covered under the Graton Rancheria Natural Resources Management Plan from critical habitat would help preserve the partnerships we developed with the Federated Indians of Graton Rancheria in the development of the Graton Biological Opinion, and will also foster future partnerships and future conservation of the Sonoma California tiger salamander. Additionally, the Tribe has made specific commitments to conserve Sonoma California tiger salamander habitat. The commitments include onsite and offsite management and conservation consistent with the Biological Opinion and Conservation Strategy.

#### Benefits of Exclusion Outweigh the Benefits of Inclusion

The benefits of excluding the Reservation lands from critical habitat outweigh the benefits of inclusion, based on the conservation values outlined in the NRMP and summarized above. Any development of the Reservation will follow the mitigation ratios in the Graton Biological Opinion at off-site location(s) and will be managed in perpetuity for the benefit of the Sonoma California tiger salamander. The remainder will be primarily passively managed as a Holding Area or Preservation Area.

We reviewed and evaluated the benefits of inclusion and the benefits of exclusion of Federated Indians of Graton Rancheria reservation lands as critical habitat for the Sonoma California tiger salamander. Including reservation lands in the critical habitat designation for the Sonoma California tiger salamander will provide little additional regulatory protection under section 7(a) of the Act when there is a Federal nexus, and educational benefits of designation will be redundant with those achieved through listing and our cooperative efforts working with the Tribe to conserve the Sonoma California tiger salamander and the physical and biological features essential to the conservation of the species. We

recognize there may be some ancillary benefit from other laws such as the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) resulting from designating these areas as critical habitat; however, we consider these possible benefits to be marginal considering the potential adverse impact that critical habitat designation could have on our partnership with the Tribe. We believe past and future coordination with the Tribe will provide sufficient education regarding the Sonoma California tiger salamander habitat conservation needs on tribal reservation lands, and therefore educational benefits for these areas are small.

The benefits of excluding Federated Indians of Graton Rancheria reservation lands from critical habitat are significant. Exclusion of these lands from critical habitat will help preserve the partnership we have developed and reinforce those we are building with other tribes, and foster future partnerships and development of management plans. The Tribe emphasized through a comment letter provided during the public comment period their belief that designation of critical habitat on tribal lands should not occur, especially on trust lands where the designation would include Tribal lands subject to their tribal management plan in preparation (Sarris 2010). We are committed to working with our tribal partner to further the conservation of the Sonoma California tiger salamander and other threatened and endangered species. Therefore, in consideration of the relevant impact to our government-to-government relationship with the Federated Indians of Graton Rancheria and our current and future conservation partnerships, and the development of an effective management plan which provides a benefit for the species, we determined the benefits of exclusion outweigh the benefits of inclusion in critical habitat designation for these lands.

In summary, based on our unique and distinctive Federal tribal trust responsibility and obligation towards the Tribe and the development of a management plan which benefits the conservation of the Sonoma California tiger salamander, we find that excluding the Federated Indians of Graton Rancheria reservation lands from this final critical habitat will preserve our partnership and foster future habitat management and species conservation efforts with the Tribe. These partnership benefits are significant and outweigh the limited regulatory and educational benefits of including these lands in final

critical habitat for the Sonoma California tiger salamander.

#### Exclusion Will Not Result in Extinction of the Species

We determined that the exclusion of approximately 252 ac (102 ha) of habitat from this final designation of critical habitat for the Sonoma California tiger salamander will not result in extinction of the species. The NRMP provides protection and long-term management of lands that meet the definition of critical habitat for the Sonoma California tiger salamander through on-site and off-site mitigation. Additionally, the jeopardy standard of section 7 of the Act for the Sonoma California tiger salamander provides assurances that the species will not go extinct as a result of exclusion from critical habitat designation. The consultation requirements of section 7(a)(2) and the attendant requirement to avoid jeopardy to the Sonoma California tiger salamander for projects with a Federal nexus will provide significant protection to the species. Therefore, based on the above discussion, the Secretary is exercising his discretion to exclude approximately 252 ac (102 ha) of habitat in the Santa Rosa Plain Unit from this final critical habitat designation.

#### Required Determinations

##### *Regulatory Planning and Review—Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (Regulatory Planning and Review). OMB bases its determination upon the following four criteria:

(1) Whether 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.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

##### *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) of 1996 (5 U.S.C. 801 et seq.), whenever an

agency must 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 (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for the Sonoma California tiger salamander will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

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; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., small business, small government jurisdiction, or small organization). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "substantial number"

or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Sonoma California tiger salamander. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the "Adverse Modification Standard"* section).

In our final economic analysis (FEA) of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Sonoma California tiger salamander and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 2 through 4 and Appendix A of the analysis and evaluates the potential for economic impacts related to: (1) Residential and commercial development, (2) transportation activities, (3) utility activities, (4) incremental administrative costs and (5) the energy industry (IEC 2011, pp. 1–5, 1–6). The FEA concludes that the proposed rulemaking may affect small entities (IEC 2011, pp. A1–A–6).

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 FEA calculates impacts to small businesses at the County-wide scale, it likely overestimates the impacts associated with critical habitat, which only covers approximately 4.2 percent of the County. The FEA 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, on average, between 0.04 and 1.27 percent of annual revenues (IEC 2011, p. A-6).

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 2011, p. A-4). Other activities, such as agricultural and mitigation bank establishment, are not expected to be affected by the designation of critical habitat; therefore no incremental impacts are expected to be borne by small entities (IEC 2011, pp. A-4, A-5).

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on our analysis, we have determined that this rule will affect a substantial number of small business entities in the building construction sector, but since the effect is less than one percent of estimated annual revenues, it is not considered to be a significant economic impact. As a result, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Sonoma California tiger salamander will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

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

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The FEA 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 Sonoma California tiger salamander, regardless of the designation of critical habitat. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Sonoma California tiger salamander conservation activities within critical habitat are not expected (IEC 2011, pp. 4-4, 4-5, A-7). As such, the designation of critical habitat is not expected 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.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would

“increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. 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 onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because 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.

Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

#### *Takings—Executive Order 12630*

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 Sonoma California tiger salamander in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to allow actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Sonoma California tiger salamander does not pose significant takings implications for lands within or affected by the designation.

#### *Federalism—Executive Order 13132*

In accordance with Executive Order 13132 (Federalism), this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in California. We did not receive comments from State resource agencies. The designation of critical habitat in areas currently occupied by the Sonoma California tiger salamander imposes nominal additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation 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—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the Sonoma California tiger salamander within the designated areas to assist the public in understanding the habitat needs of the species.

#### *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

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 (42 U.S.C. 4321 et seq.)*

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 pursuant to the National Environmental Policy Act (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)).

#### *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 (Consultation and Coordination With Indian Tribal Governments), 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.

There are tribal lands determined to be occupied with features essential to the conservation of the Sonoma California tiger salamander, but these lands have been excluded under section 4(b)(2) of the Act (see Exclusions section above).

#### **References Cited**

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

#### **Authors**

The primary authors of this rulemaking are the staff members of the Sacramento Fish and Wildlife Office.

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

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

#### **Regulation Promulgation**

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

#### **PART 17—[AMENDED]**

■ 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. Amend § 17.11(h) by revising 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                           |                                 |                   |  |        |              |                  |               |
| * * * * *                            |                                 |                   |  |        |              |                  |               |
| <i>Salamander, California tiger.</i> | <i>Ambystoma californiense.</i> | U.S.A. (CA) ..... | U.S.A. (CA—Santa Barbara County).                    | E      | 677E, 702 .. | 17.95(d) .....   | NA.           |
| <i>Salamander, California tiger.</i> | <i>Ambystoma californiense.</i> | U.S.A. (CA) ..... | U.S.A. (CA—Central California).                      | T      | 744 .....    | 17.95(d) .....   | 17.43(c).     |
| <i>Salamander, California tiger.</i> | <i>Ambystoma californiense.</i> | U.S.A. (CA) ..... | U.S.A. (CA—Sonoma County).                           | E      | 729E, 734 .. | 17.95(d) .....   | NA.           |
| * * * * *                            |                                 |                   |  |        |              |                  |               |

■ 3. In § 17.95, amend paragraph (d) by adding an entry for “California Tiger Salamander (*Ambystoma californiense*) in Sonoma County” in the same order that the species appears in the table at § 17.11(h), 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

(52) The critical habitat unit for Sonoma County, CA, is depicted on the map at paragraph (56)(ii) of this entry.

(53) Within these areas, the primary constituent elements of the physical and biological features essential to the conservation of the California tiger salamander in Sonoma County consist of three components:

(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.

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

(iii) Accessible upland dispersal habitat between locations occupied by

the species 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 map unit.* 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) Zone 10N coordinates.

(56) Santa Rosa Plain Unit, Sonoma County, California.

(i) From USGS 1:24,000 quadrangle map Healdsburg, Sebastopol, Santa Rosa, Two Rock, Cotati, Petaluma, and Mark West Springs, California. Land bounded by the following UTM Zone 10N, North American Datum of 1983 (NAD83) coordinates (E, N): 515958, 4264938; 515962, 4264053; 515984, 4264053; 516127, 4264065; 516297, 4264083; 516355, 4264107; 516437, 4264134; 517201, 4264161; 517204, 4263316; 517184, 4263318; 517153, 4263345; 517102, 4263370; 517041, 4263383; 517026, 4263378; 516978, 4263360; 516950, 4263341; 516560, 4263330; 516550, 4263241; 516566, 4263225; 516596, 4263103; 516603, 4262920; 516639, 4262756; 516882, 4262184; 517289, 4261332; 517321, 4261275; 517412, 4261284; 517483, 4261292; 517708, 4261351; 517696, 4261470; 517729, 4261546; 517837, 4261601; 517897, 4261604; 518065, 4261551; 518158, 4261611; 518347, 4261695; 518446, 4261706; 518489, 4261763; 518681, 4261928; 518753, 4262034; 518804, 4262020; 518835, 4261981; 518917, 4261963; 519050,

4261983; 519174, 4262054; 519258, 4262077; 519354, 4262188; 519440, 4262142; 519490, 4262146; 519523, 4262261; 519601, 4262282; 519821, 4262275; 520947, 4261147; 521211, 4260905; 521220, 4260905; 521224, 4260890; 522751, 4259527; 522746, 4259517; 522746, 4259517; 522498, 4259511; 522499, 4259466; 522269, 4259465; 522054, 4259463; 522053, 4259665; 521895, 4259659; 521692, 4259652; 521697, 4259307; 521335, 4259298; 521336, 4259239; 521137, 4259235; 521138, 4259168; 521074, 4259170; 521166, 4259038; 521133, 4259035; 521189, 4258952; 521439, 4258587; 521509, 4258484; 521488, 4258481; 521416, 4258480; 521319, 4258480; 521182, 4258479; 521130, 4258476; 521104, 4258466; 521079, 4258449; 521063, 4258423; 521031, 4258396; 521012, 4258374; 520991, 4258352; 520960, 4258333; 520933, 4258341; 520923, 4258339; 520483, 4258336; 520486, 4257976; 520286, 4257974; 520286, 4257923; 520076, 4257921; 520076, 4257655; 520084, 4256913; 520089, 4255250; 519469, 4255249; 519468, 4255235; 519494, 4255223; 519509, 4255204; 519606, 4255119; 519608, 4254429; 519689, 4254430; 519681, 4253613; 519951, 4253613; 519952, 4253112; 520124, 4253213; 520204, 4253261; 520317, 4253313; 520424, 4253357; 520455, 4253364; 520495, 4253368; 520561, 4253373; 520664, 4253381; 520882, 4253399; 521157, 4253422; 521721, 4253471; 522039, 4253501; 522283, 4253533; 522398, 4253561; 522702, 4253659; 522794, 4253687; 523132, 4253743; 523335, 4253777; 523620, 4253831; 523903, 4253883; 523985, 4253642; 524334, 4253725; 524339, 4253163; 524347, 4252679; 524679, 4252724; 524674, 4252887; 524869,

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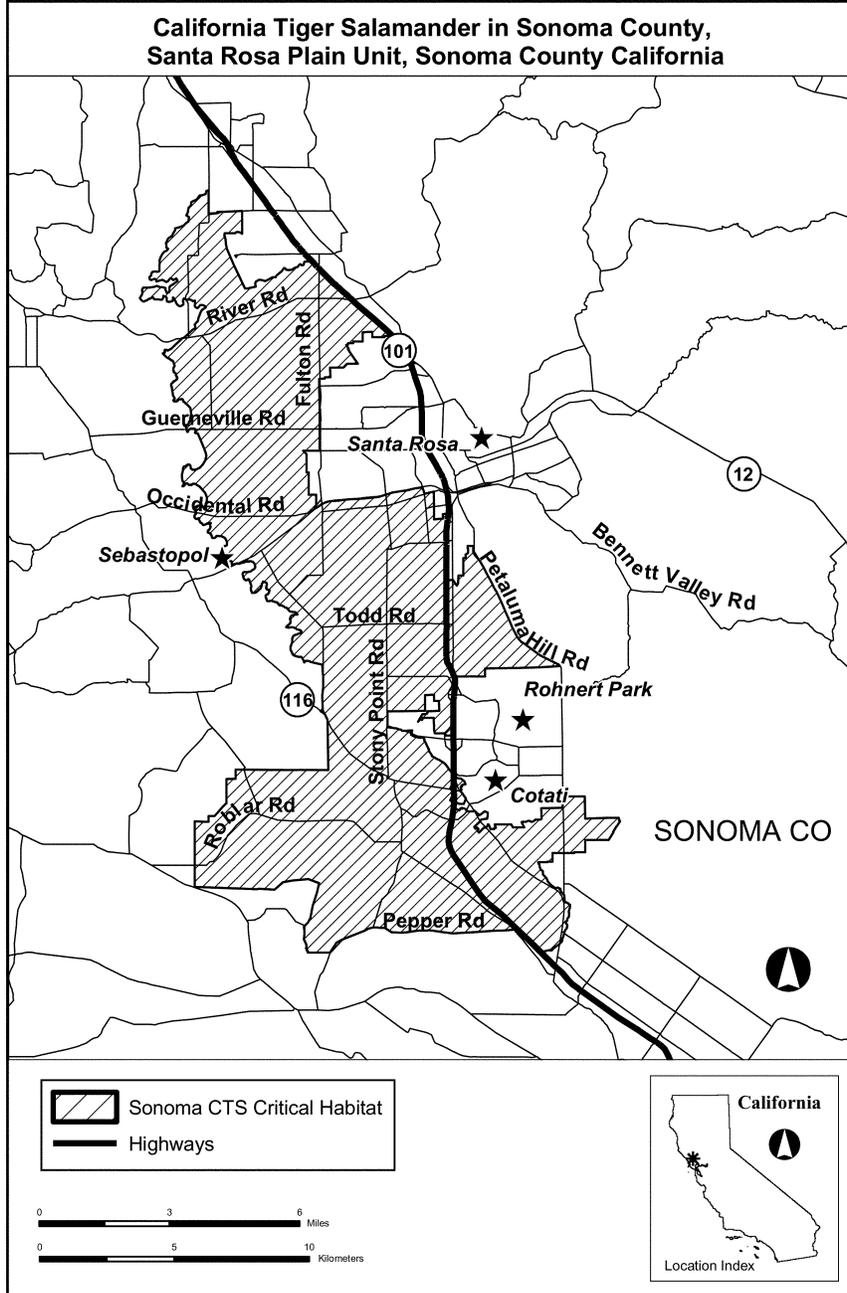
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(ii) **Note:** Map of Santa Rosa Plain Unit, follows:

BILLING CODE 4310-55-P

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Dated: August 17, 2011.

**Rachel Jacobson,**

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

[FR Doc. 2011-21945 Filed 8-30-11; 8:45 am]

**BILLING CODE 4310-55-C**