

as subsequent NORs published September 19, 1997 (62 FR 49398), October 25, 1999 (64 FR 57533), and October 30, 2001 (66 FR 54808).

On June 12, 2001, we received a petition dated June 11, 2001, from the Center for Biological Diversity (CBD) and Citizens for a Sustainable Cotati to emergency list the Sonoma County population of the California tiger salamander as an endangered species and to designate critical habitat. On February 27, 2002, CBD filed a complaint for our failure to emergency list the Sonoma County population of the California tiger salamander as endangered (*Center for Biological Diversity v. U.S. Fish and Wildlife Service* (N.D.Cal.) (Case No. C-02-0558 WHA)). On June 6, 2002, based on a settlement agreement with the CBD, the court signed an order requiring us to submit for publication in the **Federal Register**, a proposed and/or emergency rule to list the species by July 15, 2002.

On July 22, 2002, we published in the **Federal Register** an emergency rule listing the Sonoma County distinct population segment (DPS) of the California tiger salamander (Sonoma County California tiger salamander) on an emergency basis because we found that a number of threats constituted immediate and significant risk to the species (67 FR 47726). We concurrently published a proposed rule to list this taxon as endangered (67 FR 47758). The proposed rule opened a 60-day comment period which closed on September 20, 2002. On August 26, 2002, we published a notice in the **Federal Register** notifying the public of a hearing to be held on October 1, 2002, and extending the comment period until October 21, 2002 (67 FR 54761). On October 31, 2002, we re-opened the comment period for 45 days (67 FR 66377). The re-opened public comment period closed on December 16, 2002. This final rule to designate the Sonoma County California tiger salamander as an endangered species complies with the June 6, 2002, settlement agreement.

As required by section 4(b)(1) of the Act, our decision to list the Sonoma County population of the California tiger salamander is based upon the best available information at this time. We note that the petition and subsequent emergency listing of this population has led to increased interest in this population by a variety of parties, and thus to an acceleration of the rate at which new information is becoming available. We expect this trend to continue subsequent to this final listing determination. The settlement agreement discussed above requires that we submit to the **Federal Register** a

proposed rule to list the California tiger salamander range wide by May 15, 2003, and make a final listing determination on that proposal by May 15, 2004. As a part of that rulemaking we intend to review all then-current information regarding both the Sonoma County and Santa Barbara County populations, including whether they constitute valid distinct population segments, and render a final determination on the California tiger salamander accordingly.

Summary of Comments and Recommendations

In the July 22, 2002, proposed rule (67 FR 47758), we requested all interested parties submit factual reports, information, and comments that might contribute to development of a final determination. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, affected landowners and other interested parties requesting comments. We published legal notices in the Santa Rosa Press Democrat on July 29, 2002, and September 3, 2002, and the Sonoma Index-Tribune on July 30, 2002, and September 27, 2002, notifying the public of the comment period on the proposed and emergency rule and the public hearing, respectively. We requested 12 peer reviewers to comment on the proposed rule in compliance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34270).

During both public comment periods, we received 111 comment letters from public agencies, individuals, businesses, and organizations, with several commenters submitting more than one set of comments during the subsequent extensions of the comment period. We received oral comments from 49 people at the public hearing. Ninety-nine commenters opposed the listing, 60 supported the listing, and one was neutral. The breakdown of the comments included none from Federal agencies, 2 from State agencies, 8 from Sonoma County and city agencies, 49 from organizations or corporations, and 99 from individuals. One hundred and twenty people attended the hearing, with 31 individuals and 18 representatives of organizations providing oral comments. In total, 39 commenters at the hearing were opposed to the listing, 9 supported the listing, and 1 was neutral. Several comments were received after the comment period closed.

We updated the final rule to reflect comments and information we received during the comment periods. We

address substantive comments concerning the rule below. Comments of a similar nature are grouped together (referred to as "Issues" for the purpose of this summary).

Issue 1: Some commenters questioned the validity of our DPS determination for Sonoma County California tiger salamander, suggesting that the genetic data do not support a DPS. One commenter specifically suggested that the evidence that Sonoma County California tiger salamander is a separate species or subspecies and use of this as a criterion for a DPS is less clear than we indicated in our emergency rule. The commenter also suggests that there is little evidence that California tiger salamander populations in different parts of California represent separate species or subspecies. The commenter also noted that, while the unpublished Shaffer *et al.* (1993) suggest Sonoma County may warrant species status, Shaffer and McKnight (1996) make no such claim in their published paper.

Response: Genetic distinctness or the presence of genetically determined traits may be important in recognizing some DPS's, but this kind of evidence is not specifically required in order for a DPS to be recognized. Genetic information can play two different roles in the evaluation of whether a population should be recognized as a distinct vertebrate population segment for the purposes of listing under the Act. First, quantitative genetic information may, but is not required in order to provide evidence that the population is markedly separated from other populations and thus meets the DPS policy's criterion of being discrete. The DPS policy's standard for discreteness is meant to allow an entity given DPS status under the Act to be adequately defined and described. The standard adopted is believed to allow entities recognized under the Act to be identified without requiring an unreasonably rigid test for distinctness. At the same time, the standard does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms. Second, genetic characteristics that differ markedly from other populations may be one consideration in evaluating the discrete population segments biological and ecological significance to the taxon to which it belongs.

Restricting listings to full taxonomic species would render the Act's definition of species, which explicitly includes subspecies and DPS's of vertebrates, superfluous.