

Out of 126 citations appearing in the emergency rule, 52 have been published within the past 5 years (41 percent) and 83 citations have been published within the past 10 years (66 percent). The initial report on the population genetics of the California tiger salamander by Shaffer *et al.* (1993) has been substantiated by additional research (Barry and Shaffer 1994; Fisher and Shaffer 1996; Shaffer and McKnight 1996; Cook and Northen 2001; Shaffer and Trenham 2002).

Issue 14: Some commenters felt we had not quantified the magnitude of loss of the California tiger salamander in Sonoma County. One herpetologist said we had presented accurate information on the status of the species in Sonoma County.

Our Response: Based on the best available scientific and commercial information, five breeding sites for the California tiger salamander in Sonoma County have been destroyed in the past 2 years, and there are only eight known breeding sites remaining. Five of these sites are on private lands with no effective regulatory protection. Only one of the three protected sites is over 32 ha (80 ac) in size. All known breeding sites in the Cotati area have now been destroyed. The remaining sites in the Cotati area where the animals can mate and develop are roadside ditches and other suboptimal habitat during years of above average rainfall.

Issue 15: According to some commenters, there has been no study to determine population trends or ways to improve breeding at the known preserves containing the California tiger salamander.

Our Response: All of the three protected sites known to contain salamanders have been surveyed for the past 4 years. All surveys at these sites have resulted in the detection of very low numbers of salamander larvae during years that they were found at all. The largest preserve is approximately 81 ha (200 ac) in size, yet continues to exhibit very low numbers of larvae as indicated by yearly surveys. It is probable that salamander populations are limited by the lack of uplands for estivation during the dry season.

Issue 16: A number of commenters asked us to delay a final listing decision until a full review of the scientific evidence supporting or disputing the status of the Sonoma County California tiger salamander had been presented in a public forum.

Our Response: The purpose of publishing a proposed rule and soliciting public input during the comment period is to fully involve the public in the listing process. We also

held a workshop and public hearing in Santa Rosa, California, to encourage agency and public input into the review of the proposed rule. We solicited 12 recognized experts and specialists to review the proposed rule. We utilized this information in making the final determination.

Issue 17: Numerous commenters said the listing of the California tiger salamander would have a severe economic impact on Sonoma County. They said we should complete an analysis of the economic effects of listing and include it in the final rule.

Our Response: Under section 4(b)(1)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must base a listing decision solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to ensure that listing decisions are “* * * based solely on biological criteria and to prevent non-biological criteria from affecting such decisions* * *” (House of Representatives Report Number 97–835, 97th Congress, Second Session 19 (1982)). As further stated in the legislative history, “* * * economic considerations have no relevance to determinations regarding the status of species * * *” (Id. at 20). Therefore, we did not consider the economic impacts of listing the Sonoma County California tiger salamander.

Issue 18: Two commenters stated that critical habitat has not been proposed and, therefore, the listing is in violation of the Act.

Our Response: Pursuant to section 4(a)(3) of the Act, we have determined that designation of critical habitat is prudent for the Sonoma County California tiger salamander (see the “Critical Habitat” section). However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing the DPS without designating critical habitat at this time allows us to provide protections needed for the conservation of the species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. We will prepare a critical habitat designation in the future when our available resources allow.

Issue 19: One commenter said the 1995 Santa Rosa Plain Vernal Pool Ecosystem Preservation Plan indicated the Sonoma County California tiger

salamander is potentially less vulnerable than stated in our proposed rule.

Our Response: The Santa Rosa Plain has experienced rapid urban growth since the vernal pool ecosystem preservation plan was issued in 1995. From 1995 until 2001, the population of Sonoma County increased by approximately 10% with an average annual growth rate of approximately 1.6 percent. (U.S. Census Bureau; California Department of Finance; California Association of Realtors website 2002). Increases in housing, traffic, industry, and office buildings have occurred concurrent with the increase in population growth. In the past 2 years, five breeding sites for the Sonoma County California tiger salamander have been destroyed. Loss of real and potential salamander breeding sites and estivation habitat continues to occur in the Santa Rosa Plain. Given the amount of habitat loss, inadequate regulatory mechanisms, and other threats, we believe the remaining California tiger salamanders in Sonoma County are endangered.

Issue 20: Several commenters stated that we should compensate private landowners for the loss of revenue that occurs when California tiger salamanders are found on their land. Another commenter said the “Cattle Growers” ruling prohibits us from imposing land use restrictions predicated upon listing except through a designation of critical habitat, and not doing so constitutes unlawful taking of property without compensation.

Our Response: The presence of an endangered or threatened species does not prevent all uses of public or private lands. The listing of a species does not impose land use restrictions and, therefore, does not result in unlawful taking of property. In addition, we will assist landowners in the identification of proposed activities that could result in take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct), develop measures to minimize the potential for take, and work with them to obtain authorizations for incidental take through sections 7 and 10 of the Act. Recovery planning for this species may include recommendations for land acquisition or easements involving private landowners. Any such efforts will be undertaken with the full cooperation of the landowners.

A recent case pertinent to this issue, *Arizona Cattle Growers v. Fish and Wildlife and Bureau of Land Management* (9th Circuit Court of Appeals 99–16102), provides that, in