

2001; Pechmann *et al.* 2001). Successful compensatory mitigation for losses of California tiger salamander pool and pond habitat due to filling would also require the connectivity of the restoration site to other pools and ponds (Gibbs 1998; Lehtinen *et al.* 1999; Marsh and Trenham 2001; Trenham *et al.* 2001). Pond isolation may be an important consideration in disturbed environments where inter-pond dispersal is impeded by barriers such as roads and urban development (Marsh and Trenham 2001). The California tiger salamander may also require large preserves to maintain viable breeding populations and to allow recolonizations after natural and anthropogenic local extirpations (P. Northen, *in litt.* 2001).

We conclude that regulation of wetlands filling by the Corps under Section 404 of the CWA is inadequate to protect the Central California tiger salamander from further decline. Section 404 administration fails to prevent losses of numerous small wetlands in California which may support Central California tiger salamander breeding. Section 404 does not regulate the continuing losses of Central California tiger salamander terrestrial habitat (except to the extent certain agricultural activities are regulated). When authorized fills under Section 404 do result in compensatory mitigation for wetlands losses, it is unlikely that Central California tiger salamander losses at specific fill sites can, and will be, fully and successfully mitigated.

Endangered Species Act. Two DPSs of the California tiger salamander in California have been listed under the Act. The Santa Barbara County DPS was listed on September 15, 2000 (65 FR 3096). The Sonoma County DPS was listed under an emergency rule effective July 22, 2002 (67 FR 4772). The final rule listing this DPS was published March 19, 2003 (68 FR 13497). These two DPSs are currently provided with the protections afforded by the Act.

Elsewhere within its range in California, the California tiger salamander is not currently a federally listed species under the Act. Within this unprotected range in California, however, there are currently 16 species (1 beetle, 4 species of freshwater shrimp, and 11 species of plants) listed under the Act that occur in association with seasonally-flooded vernal pools. Critical habitat has been designated for the threatened delta green ground beetle (*Elaphrus viridus*), but its range is limited to a portion of the area at Jepson Prairie in Solano County that is inhabited by the California tiger

salamander. We have also proposed approximately 687,968 ha (1.7 million ac) in 36 California Counties and one Oregon county as critical habitat considered essential for the conservation of the 4 freshwater shrimp and the 11 vernal pool plant species (68 FR 12336).

In some instances the vernal pools supporting the 15 listed vernal pool species, and the critical habitat being proposed for them, overlap with local occurrences of the Central California tiger salamander. However, such overlap is limited, and where it does occur, regulatory protections afforded under the Act for the 15 listed vernal pool species, or their proposed critical habitat, do not convey adequate protection to Central California tiger salamander upland habitats. Most of the requirements of the listed vernal pool plants and freshwater shrimp can be met through maintenance of existing hydrology within the confines (or with additional upland areas dependent on the individual location) of individual vernal pools or vernal pool complexes. California tiger salamanders, on the other hand, spend only about 20 percent of their lives in such pools or ponds, and 80 percent in the confines of small mammal burrows in nearby terrestrial areas.

Lacey Act. The Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378; Pub. L. 97–79, as amended) provide some protection for the California tiger salamander by making it illegal to trade in this species. This legislation prohibits the import, export, sale, receipt, acquisition, purchase, and engagement in interstate or foreign commerce of any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State. The law covers all fish and wildlife and their parts or products, and plants protected by State law. This Act does not apply to the interstate shipment, through Tribal lands or a State, of any fish, wildlife, or plant legally taken if the shipment goes to a State in which the fish or wildlife or plant may be legally possessed.

State

Since 1994, the California Department of Fish and Game (CDFG) has recognized the California tiger salamander as a “species of special concern.” More recently, the California tiger salamander has been placed on the State’s list of protected amphibians, which means that it cannot be taken without a special permit issued for scientific collecting or research. Also, as stated earlier in Factor C, the California

Code of Regulations (2002) specifies California tiger salamanders can no longer be taken, possessed, or used for fishing bait.

On July 6, 2001, the CDFG received a petition from the CBD to list the California tiger salamander under the California Endangered Species Act. The status of the animal and potential threats was evaluated by the CDFG. On October 3, 2001, the Director of the CDFG recommended to the California Fish and Game Commission (Commission) that the petition be accepted and the animal be designated as a candidate (R. Hight, CDFG, *in litt.* 2001). On December 7, 2001, the Commission found that the petition was not warranted because the Commissioners felt there was not enough information on the population abundance and trend information of the California tiger salamander (R. Treanor, Commission, *in litt.* 2001).

CDFG recognizes the importance of California tiger salamander conservation at the local population level and routinely considers and recommends actions to mitigate potential adverse effects to the species during its review of development proposals. However, CDFG’s primary regulatory venue is under the California Environmental Quality Act (CEQA) (Public Resources Code Sec. 21000–21177). CEQA has proven to be a variable, and often inadequate, regulatory mechanism for providing protection to the California tiger salamander and its habitat.

CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over a project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines, as amended, requires a finding of significance if a project has the potential to “reduce the number or restrict the range of a rare or endangered plant or animal.” Once significant effects are identified, the lead agency must require mitigation for effects through changes in the project unless specific overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects that may include the destruction of listed endangered species or their habitat may be approved.

Moreover, neither CEQA nor other statutory mechanisms under CDFG’s jurisdiction provides any effective regulatory mechanisms for reducing or eliminating several of the other manmade factors (as discussed below)