

NOTICE OF FINDINGS
California Tiger Salamander
(*Ambystoma californiense*)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), at its March 3, 2010 meeting in Ontario, California, made a finding pursuant to Fish and Game Code section 2075.5, that the petitioned action to add the California tiger salamander (*Ambystoma californiense*) to the list of threatened species under the California Endangered Species Act (CESA)(Fish & G. Code, § 2050 et seq.) is warranted.¹ (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1).)

NOTICE IS ALSO GIVEN that the Commission, consistent with Fish and Game Code section 2075.5, proposes to amend Title 14, section 670.5, of the California Code of Regulations, to add the California tiger salamander to the list of species designated as threatened under CESA. (See also *Id.*, tit. 14, 670.1, subd. (j).)

I.
BACKGROUND AND PROCEDURAL HISTORY

On July 6, 2001, the Center for Biological Diversity (Center) petitioned the Commission to list the California tiger salamander as a threatened or endangered species under CESA, requesting that the Commission take emergency action to list the species as endangered pursuant to Fish and Game Code section 2076.5.² (Cal. Reg. Notice Register 2001, No. 33-Z, p. 1393.) On August 3, 2001, with a supporting recommendation from the Department of Fish and Game (Department), the Commission declined to take emergency action to list the California tiger salamander, finding there was no emergency posing a significant threat to the continued existence of the species. (*Id.*, 2001, No. 34-Z, p. 1426.) Thereafter, on October 4, 2001, the Department submitted its initial Evaluation of Petition: Request of Center for Biological Diversity to List California Tiger Salamander (*Ambystoma californiense*) as Endangered (October 3, 2001) (hereafter, the 2001 Candidacy Evaluation Report) to the Commission at its meeting in San Diego, California, recommending that the petition be accepted for further consideration pursuant to Fish and Game Code section 2073.5, subdivision (a)(2).

On December 7, 2001, at its meeting in Long Beach, California, the Commission rejected the Center's petition to list the California tiger salamander as a threatened or endangered species pursuant to Fish and Game Code section 2074.2, subdivision (a)(1). In reaching its decision, the Commission considered the petition, the Department's 2001 Candidacy Evaluation Report, and other

¹ The definition of a "threatened species" for purposes of CESA is found in Fish and Game Code section 2067.

² The definition of an "endangered species" for purposes of CESA is found in Fish and Game Code section 2062.

relevant information, and determined based on substantial evidence in the administrative record of proceedings that the petition did not include sufficient information to indicate that the petitioned action may be warranted. The Commission adopted findings to the same effect at its February 8, 2002, meeting in Sacramento, California, publishing notice of its finding as required by Fish and Game Code section 2078 and controlling regulation on March 1, 2002. (Cal. Reg. Notice Register 2002, No. 9-Z, p. 469; see also Cal. Code Regs., tit. 14, § 670.1, subd. (e)(1).)

On January 30, 2004, the Commission received a second petition from the Center to list California tiger salamander as a threatened or endangered species under CESA. (Cal. Reg. Notice Register 2004, No. 9-Z, p. 270.) Consistent with the Fish and Game Code and controlling regulation, the Commission referred the petition to the Department, the Department evaluated of the petition, along with additional information from the interested public, and submitted its initial Evaluation of Petition: Request of the Center for Biological Diversity et al. (2004) to List California Tiger Salamander (*Ambystoma californiense*) as Endangered (July 28, 2004) (hereafter, the 2004 Candidacy Evaluation Report) to the Commission. The Department recommended in its 2004 Candidacy Evaluation Report that the Commission accept the petition for further evaluation under CESA. (Fish & G. Code, § 2073.5, subd. (a)(2); Cal. Code Regs., tit. 14, § 670.1, subd. (d).)

The Commission, at its October 22, 2004 meeting in Concord, California, rejected the Center's 2004 petition for further evaluation under CESA pursuant to Fish and Game Code section 2074.2, subdivision (a)(1). In reaching its determination, the Commission found, based on the petition, the Department's 2004 Candidacy Evaluation Report, and other substantial evidence in the administrative record of proceedings, that there was not sufficient information to indicate the petitioned action may be warranted. The Commission adopted findings to the same effect at its December 2, 2004 meeting in Monterey, California, publishing notice of its finding as required by Fish and Game Code section 2078 and controlling regulation on December 24, 2004. (Cal. Reg. Notice Register 2004, No. 52-Z, p. 1754; see also Cal. Code Regs., tit. 14, § 670.1, subd. (e)(1).)

On February 28, 2005, the Center filed a petition for writ of mandate in Sacramento County Superior Court challenging the Commission's decision to reject the 2004 petition to list the California tiger salamander under CESA. (*Center for Biological Diversity v. California Fish and Game Commission*, Super. Ct. Sacramento County, 2005, No. 05CS00233.) The trial court in the litigation ruled against the Commission on December 14, 2006, finding that the administrative record of proceedings did not include substantial evidence to support the Commission's final action. The court, in turn, directed the Commission to accept the Center's petition for further evaluation and, in so doing, to designate California tiger salamander as a candidate species under

CESA. The Third District Court of Appeal affirmed the trial court decision on September 2, 2008, with the California Supreme Court denying the Commission's related petition for review on December 10, 2008. (*Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597.)

On February 5, 2009, at its meeting in Sacramento, California, the Commission, pursuant to court order in the *Center for Biological Diversity* litigation, set aside its October 2004 determination rejecting the Center's second petition and designated the California tiger salamander as a candidate species under CESA.³ (Cal. Reg. Notice Register 2009, No. 8-Z, p. 284; see also Fish & G. Code, §§ 2080, 2085.) The Commission took emergency action at the same time pursuant to the Fish and Game Code and the Administrative Procedure Act (APA) (Gov. Code, § 11340 et seq.), authorizing take of the candidate species under CESA, subject to various terms and conditions. (See Fish & G. Code, §§ 240, 2084, adding Cal. Code Regs., tit. 14, § 749.4; Cal. Reg. Notice Register 2009, No. 10-Z, p. 399.) The Commission extended the emergency take authorization for California tiger salamander on two occasions, effective through February 23, 2010. (*Id.*, 2009, No. 36-Z, p. 1499; Cal. Reg. Notice Register 2009, No. 49-Z, p. 208.)

Consistent with the Fish and Game Code and controlling regulation, the Department commenced a 12-month status review of California tiger salamander following published notice of its designation as a candidate species under CESA. As part of that effort, the Department solicited data, comments, and other information from interested members of the public, and the scientific and academic community; and the Department submitted a preliminary draft of its status review for independent peer review by a number of individuals acknowledged to be experts on the California tiger salamander, possessing the knowledge and experts to critique the scientific validity of the report. (Fish & G. Code, §§ 2074.4, 2074.8; Cal. Code Regs., tit. 14, § 670.1, subd. (f)(2).) The effort culminated with the Department's final Status Review of the California Tiger Salamander (*Ambystoma californiense*) (January 11, 2010) (Status Review), which the Department submitted to the Commission at its meeting in Sacramento, California, on February 4, 2010. The Department recommended to the Commission based on its Status Review and the best science available to the Department that designating California tiger salamander as a threatened species under CESA is warranted. (Fish & G. Code, § 2074.6; Cal. Code Regs., tit. 14, § 670.1, subd. (f).)

The Commission considered the petition, the Department's 2001 and 2004 Candidacy Evaluation Reports, the Department's 2010 Status Review, and other information included in the Commission's administrative record of proceedings at

³ The definition of a "candidate species" for purposes of CESA is found in Fish and Game Code section 2068.

its meeting in Ontario, California, on March 3, 2010. (Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g), (i).) Following public comment and deliberation, the Commission determined, based on the best available science before it, that listing California tiger salamander as a threatened species under CESA is warranted. (Fish & G. Code, § 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).) In so doing, the Commission directed its staff to prepare findings of fact consistent with its determination for consideration and ratification by the Commission at a future meeting. The Commission also directed its staff in coordination with the Department to begin formal rulemaking under the APA to add California tiger salamander to the list of threatened species set forth in Title 14, section 670.5, of the California Code of Regulations. (Fish & G. Code, §§ 2075.5(2); Cal. Code Regs., tit. 14, § 670.1, subd. (j).)

II. STATUTORY AND LEGAL FRAMEWORK

The Commission has prepared these findings as part of its final action under CESA to designate the California tiger salamander as a threatened species. As set forth above, the Commission's determination that listing California tiger salamander is warranted marks the end of formal administrative proceedings under CESA prescribed by the Fish and Game Code and controlling regulation. (See generally Fish & G. Code, § 2070 et seq.; Cal. Code Regs., tit. 14, § 670.1.) The Commission, as established by the California Constitution, has exclusive statutory authority under California law to designate endangered, threatened, and candidate species under CESA. (Cal. Const., art. IV, § 20, subd. (b); Fish & G. Code, § 2070.)⁴

As set forth above, the CESA listing process for California tiger salamander began in the present case with the Center's submittal of its first petition to the Commission in July 2001. (Cal. Reg. Notice Register 2001, No. 33-Z, p. 1393; ; see also *Id.*, 2004, No. 9-Z, p. 270.) The regulatory process that ensued is described above in some detail, along with related references to the Fish and Game Code and controlling regulation. The CESA listing process generally is also described in some detail in published appellate case law in California, including

- *Mountain Lion Foundation v. California Fish and Game Commission* (1997) 16 Cal.4th 105, 114-116;
- *California Forestry Association v. California Fish and Game Commission* (2007) 156 Cal.App. 4th 1535, 1541-1542;

⁴ The Commission, pursuant to this authority, may add, remove, uplist or downlist any plant or animal species to the list of endangered or threatened species, or designate any such species as a candidate for related action under CESA. (See also Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A)-(C).) In practical terms, any of these actions may be commonly referred to as subject to CESA's "listing" process.

- *Center for Biological Diversity v. California Fish and Game Commission* (2008) 166 Cal.App.4th 597, 600; and
- *Natural Resources Defense Council v. California Fish and Game Commission* (1994) 28 Cal.App.4th 1104, 1111-1116.

The “is warranted” determination at issue here for California tiger salamander stems from Commission obligations established by Fish and Game Code section 2075.5. Under this provision, the Commission is required to make one of two findings for a candidate species at the end of the CESA listing process; namely, whether the petitioned action is warranted or is not warranted. Here with respect to California tiger salamander, the Commission made the finding under section 2075.5(2) that the petitioned action is warranted.

The Commission was guided in making this determination by various statutory provisions and other controlling law. The Fish and Game Code, for example, defines an endangered species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant which is in serious danger of becoming extinct throughout all, or a significant portion, of its range due to one or more causes, including loss of habitat, change in habitat, over exploitation, predation, competition, or disease. (Fish & G. Code, § 2062.)

Similarly, the Fish and Game Code defines a threatened species under CESA as a native species or subspecies of a bird, mammal, fish, amphibian, reptile or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of the special protection and management efforts required by this chapter. (*Id.*, § 2067.)

Likewise as established by published appellate case law in California, the term “range” for purposes of CESA means the range of the species within California. (*California Forestry Association v. California Fish and Game Commission, supra*, 156 Cal. App. 4th at p. 1540, 1549-1551.)

The Commission was also guided in making its determination regarding California tiger salamander by Title 14, section 670.1, subdivision (i)(1)(A), of the California Code of Regulations. This provision provides, in pertinent part, that a species shall be listed as endangered or threatened under CESA if the Commission determines that the species’ continued existence is in serious danger or is threatened by any one or any combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

Likewise, the Commission was also guided in its determination regarding California tiger salamander by Fish and Game Code section 2070. This section provides that the Commission shall add or remove species from the list it establishes under CESA only upon receipt of sufficient scientific information that the action is warranted. Similarly, CESA provides policy direction not specific to the Commission per se, indicating that all state agencies, boards, and commissions shall seek to conserve endangered species and threatened species and shall utilize their authority in furtherance of the purposes of CESA. (Fish & G. Code, § 2055.) This policy direction does not compel a particular determination by the Commission in the CESA listing context. Yet, the Commission made its determination regarding California tiger salamander mindful of this policy direction, acknowledging that "[l]aws providing for the conservation of natural resources' such as the CESA 'are of great remedial and public importance and thus should be construed liberally.'" (*California Forestry Association v. California Fish and Game Commission*, *supra*, 156 Cal. App. 4th at pp. 1545-1546, citing *San Bernardino Valley Audubon Society v. City of Moreno Valley* (1996) 44 Cal.App.4th 593, 601; Fish & G. Code, §§ 2051, 2052.)

Finally in considering these factors, CESA and controlling regulation require the Commission to actively seek and consider related input from the public and any interested party. (See, e.g., *Id.*, §§ 2071, 2074.4, 2078; Cal. Code Regs., tit. 14, § 670.1, subd. (h).) The related notice obligations and public hearing opportunities before the Commission are also considerable. (Fish & G. Code, §§ 2073.3, 2074, 2074.2, 2075, 2075.5, 2078; Cal. Code Regs., tit. 14, § 670.1, subds. (c), (e), (g), (i); see also Gov. Code, § 11120 et seq.) All of these obligations are in addition to the requirements prescribed for the Department in the CESA listing process, including an initial evaluation of the petition and a related recommendation regarding candidacy, and a 12-month status review of the candidate species culminating with a report and recommendation to the Commission as to whether listing is warranted based on the best available science. (Fish & G. Code, §§ 2073.4, 2073.5, 2074.4, 2074.6; Cal. Code Regs., tit. 14, § 670.1, subds. (d), (f), (h).)

III.

FACTUAL AND SCIENTIFIC BASES FOR THE COMMISSION'S FINDING

The factual and scientific bases for the Commission's finding that listing California tiger salamander as a threatened species under CESA is warranted are set forth in detail in the Commission's administrative record of proceedings. Substantial evidence in the administrative record of proceedings in support of the Commission's determination includes, but is not limited to the Center's 2001 and 2004 petitions, the Department's 2001 and 2004 Candidacy Evaluation Reports, the Department's 2010 Status Review, and other information specifically presented to the Commission and otherwise included in the Commission's administrative record of proceedings as it existed up to and including the meeting in Ontario, California, on March 3, 2010. The Commission made its final

determination under CESA with respect to California tiger salamander at that meeting. (Fish & G. Code, § 2075; Cal. Code Regs., tit. 14, § 670.1, subds. (g), (i).)

The Commission finds the substantial evidence highlighted in the preceding paragraph, along with other substantial evidence in the administrative record of proceedings, supports the Commission's determination under CESA that the continued existence of California tiger salamander in the State of California is threatened by one or a combination of the following factors:

1. Present or threatened modification or destruction of its habitat;
2. Overexploitation;
3. Predation;
4. Competition;
5. Disease; or
6. Other natural occurrences or human-related activities.

The Commission also finds that the same substantial evidence constitutes sufficient scientific information to establish that designating California tiger salamander as a threatened species under CESA is warranted.

The following Commission findings highlight in more detail some of the scientific and factual information and other substantial evidence in the administrative record of proceedings that support the Commission's determination that the California tiger salamander's continued existence is threatened in California:

1. Past and continuing loss and fragmentation of essential wetland and upland habitat due to urbanization and conversion to more intensive agricultural practices in its range in the Central Valley, Santa Barbara and Sonoma counties, Bay Area, and foothills of the Coast Range and Sierra Nevada.
2. Hybridization with non-native tiger salamander species illegally established in the wild (formerly legal as fishing bait) in significant portions of its range, resulting in viable hybrid offspring that have reduced genetic purity and which often out-compete or eat pure-strained California tiger salamanders.
3. Widespread predation and competition in breeding habitat by non-native fishes and bullfrogs.
4. Potential susceptibility to introduced diseases from non-native fishes and tiger salamanders, or other amphibian species.
5. Certain agricultural practices, primarily the use of rodenticides that kill ground squirrels whose burrows are essential California tiger salamander habitat.
6. Mortality from annual road crossings to breeding ponds.

7. Climate change, which would likely affect wetland-dependent species such as the California tiger salamander by changing wetland hydrology, reducing habitat, and increasing disease potential.
8. Populations on limited protected areas are impacted by varying degrees to the factors mentioned above.

IV. FINAL DETERMINATION BY THE COMMISSION

The Commission has weighed and evaluated all information and inferences for and against listing California tiger salamander under CESA. This information includes scientific and other general evidence in the Center's 2001 and 2004 petitions, the Department's 2001 and 2004 Candidacy Evaluation Reports and the Department's related recommendations, the Department's 2010 Status Review and related recommendation based on the best available science, written and oral comments received from members of the public, and other evidence included in the Commission's administrative record of proceedings. Based upon substantial evidence in the administrative record the Commission has determined that there is sufficient scientific information to indicate that listing California tiger salamander as a threatened species under CESA is warranted. (Fish & G. Code, § 2075.5(2).) In making this determination, the Commission also finds the continued existence of California tiger salamander is threatened in the State of California as set forth in these findings and supported by substantial evidence in the Commission's administrative record of proceedings. (Cal. Code Regs., tit. 14, § 670.1, subd. (i)(1)(A).)