



Resources Center, and one from Alyssa Oliviera, Girl Scout #1040. One additional letter from Hardt Mason Law neither supported nor opposed the proposed change, but requested that the proposed change not occur until the Commission clarifies its intent regarding the extent to which hybridized progeny of the California tiger salamander would be protected by the California Endangered Species Act.

No other public comments, written or oral, were received during the public comment period.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

No alternatives were identified.

(b) No change Alternative:

If the Commission determines that listing is not warranted, the California tiger salamander will have no formal State legal status, the position it held prior to the petition filing.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result

from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Although (CESA) statutes do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing or delisting process.

CESA is basically a two-stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact of businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on business and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of

the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Designation of the California tiger salamander as threatened will subject it to the provisions of CESA. This act prohibits take and possession except as may be permitted by the Department.

Threatened status is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to the California Environmental Quality Act (CEQA). The CEQA requires local governments and private applicants undertaking projects subject to the CEQA to consider *de facto* endangered species to be subject to the same requirements under the CEQA as though they were already listed by the Commission in Section 670.2 (CEQA Guidelines, Section 15380). California tiger salamander has qualified for protection under the CEQA Guidelines Section 15380 since its designation by the Department in 1994 as a species of special concern and the US Fish and Wildlife Service in 2004 as threatened throughout its range.

Required mitigation as a result of lead agency actions under the CEQA, whether or not the species is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchasing off-site habitat, development and implementation of management plans, establishing new populations, installation of protective devices such as fencing, protection of additional habitat, and long-term monitoring of mitigation sites. Lead agencies may also require additional actions should the mitigation measures fail, resulting in added expenditures by the proponent. If the mitigation measures required by the CEQA lead agency do not minimize and fully mitigate to the standards of CESA, listing could increase business costs by requiring measures beyond those required by the CEQA.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

No significant impact.

(c) Cost Impacts on a Representative Private Person or Business:

Designation of threatened or endangered status, per se, would not necessarily result in any significant cost to private persons or entities undertaking activities subject to CEQA. CEQA presently requires private applicants undertaking projects subject to CEQA to consider *de facto* endangered (or threatened) and rare species to be subject to the same protections under CEQA as though they are already listed by the Commission in Section 670.2 or 670.5 of Title 14, CCR (CEQA Guidelines Section 15380).

Any added costs should be more than offset by savings that would be realized through the information consultation process available to private applicants under CESA. The process would allow conflicts to be resolved at an early stage in project planning and development, thereby avoiding conflicts later in the CEQA review process, which would be more costly and difficult to resolve.

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None.

(e) Nondiscretionary Costs/Savings to Local Agencies:

None.

(f) Programs mandated on Local Agencies or School Districts:

None.

(g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None.

(h) Effect on Housing Costs:

None.

## Updated Informative Digest/Policy Statement Overview

The Department of Fish and Game recommends that the Commission amend subsection (b)(3) of Section 670.5 of Title 14, CCR, to add the California tiger salamander (*Ambystoma californiense*) to the list of threatened animals.

In making the recommendation to list the California tiger salamander pursuant to CESA, the Department identified the following primary threats: 1) continued and long-term habitat loss/conversion and fragmentation (the California tiger salamander requires both aquatic and upland habitats; anything that impedes movements such as roads or other barriers restricts the salamander from moving between the two habitats); 2) hybridization with introduced non-native tiger salamanders over the past 60 years, resulting in decreased population and distribution of genetically “pure” native tiger salamanders; 3) increased predation by, and competition with, other non-native species - particularly fishes and amphibians. More detail about the current status of the California tiger salamander can be found in the “Report to the California Fish and Game Commission, “A Status Review of the California tiger salamander (*Ambystoma californiense*)” (Department of Fish and Game, January 11, 2010; <http://www.dfg.ca.gov/wildlife/nongame/publications/>).

**There was one modification made to the originally proposed language of the Initial Statement of Reasons. Subsection (b)(4)(a) Desert tortoise's scientific name was misspelled and the correct spelling is shown in strikeout/underline format. The Commission did not have a quorum at its May 5, 2010 meeting; therefore, the Commission, at its May 20, 2010 teleconference meeting in Sacramento, adopted the proposed changes to Section 670.5, Title 14, CCR, to list the California tiger salamander (*Ambystoma californiense*) as a threatened species under the California Endangered Species Act (CESA).**

**Addendum to Final Statement of Reasons  
Section 670.5, Title 14, CCR  
Animals of California Declared to be Threatened or Endangered**

Comment 1

An email dated March 31, 2010 from Dr. Glenn Stewart supports adding the California Tiger Salamander to the list of threatened animals.

Response

*Comment noted.*

Comment 2

A letter dated April 29, 2010 from Central Sierra Environmental Resource Center supports adding the California Tiger Salamander to the list of threatened animals.

Response

*Comment noted.*

Comment 3

An email dated April 25, 2010 from Alyssa Oliviera supports adding the California Tiger Salamander to the list of threatened animals.

Response

*Comment noted.*

Comment 4

A letter dated April 29, 2010 from Hardt Mason Law requesting that the proposed change not occur until the Commission clarifies its intent regarding the extent to which hybridized progeny of the California Tiger Salamander would be protected by the California Endangered Species Act.

Response

*It is unrealistic to expect that all tiger salamander populations in the state will be sampled for genetic integrity, so there will always be substantial uncertainty about which individuals and populations are pure CTS.*