

Dated: October 1, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT78

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, and Santa Catalina Island fox were listed as endangered species under the Endangered Species Act of 1973, as amended (Act), on March 5, 2004. We do not find any habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Because there is no habitat that meets the definition of critical habitat for the island fox subspecies, there is none to propose, and we are proposing that zero critical habitat be designated.

We solicit data and comments from the public on all aspects of this proposed finding. Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis.

DATES: We will consider comments received by December 6, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to: fw1islandfox@r1.fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is

not functional, please submit comments by the alternate methods mentioned above.

4. You may fax your comments to 805/644-3958.

The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: For the San Miguel Island fox, Santa Rosa Island fox, and Santa Cruz Island fox, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office at the address given above (telephone 805/644-1766; facsimile 805/644-3958). For the Santa Catalina Island fox, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA (telephone 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION:

Preamble

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs). The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation

requirements of section 7." Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which

those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

The Island fox is taxonomically divided into six subspecies that are each limited in range to a single island (Gilbert *et al.* 1990; Wayne *et al.* 1991; Collins 1991a, 1993; Goldstein *et al.* 1999). Each subspecies is reproductively isolated from the others by a minimum of 5 kilometers (3 miles) of ocean waters. For further information about the subspecies' taxonomy, description, distribution, habitat, life history, and threats, please refer to the March 5, 2004, final listing rule (69 FR 10335), in which we determined that four of the subspecies were endangered. Regarding the past, present, and future threats faced by these taxa in determining the listing status, the threats are primarily due to predation from golden eagles (on San Miguel, Santa Rosa, and Santa Cruz islands) or canine distemper virus (on Santa Catalina Island). Other threats include disease, natural events, non-native herbivores and on Santa Catalina Island, competition from feral cats, and road mortality, all of which could diminish or destroy the small extant populations. See Tables 1–4, in our final listing rule, for summaries of the status, and major threats, faced by the four subspecies as well as the conservation actions undertaken to protect each of the subspecies, and the effectiveness of such measures (69 FR 10335, March 5, 2004).

Previous Federal Actions

On December 10, 2001, we published a proposal to list four subspecies of island fox as endangered (66 FR 63654). Please refer to this proposed rule for information on Federal actions prior to December 10, 2001. On April 22, 2003, the Center for Biological Diversity filed suit against the Service for failure to

finalize the listing and for failure to publish a final determination regarding critical habitat (*Center for Biological Diversity v. Williams, et al.* No. CV–03–2729 AHM (C.D. Cal.)). In settlement of that lawsuit, we agreed to submit the final listing determination to the **Federal Register** on or by March 1, 2004, and if prudent, submit a proposed rule to designate critical habitat to the **Federal Register** on or by October 1, 2004, and a final determination regarding critical habitat on or by November 1, 2005. The final rule listing the four subspecies of the island fox as endangered was published on March 5, 2004 (69 FR 10335).

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3(5)(a) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the March 5, 2004, final listing rule, we determined that designation of critical habitat was prudent for the island foxes. As discussed more fully below, we now find there are no “specific areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection.” Further, there are no “specific areas outside the geographical area occupied by [the] species at the

time it [was] listed that are essential for the conservation of the species.”

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The island fox, however, is a habitat generalist in all aspects of its life history. It does not require particular habitats for food, cover, breeding, and denning sites. The foxes are opportunistic omnivores, and eat a wide variety of plants (*e.g.*, grass, fruits, and berries) and animals (*e.g.*, insects, birds, mice) in whatever habitat they find them (69 FR 10336). As such the foxes use all the habitat available on each of the islands, including riparian, oak woodland, pine woodland, chaparral, coastal sage scrub, maritime scrub, and grasslands. In general, some of these habitats contain cover from aerial predation, and the nature of the cover is not habitat specific. Reproduction in the island foxes is also not limited to a specific habitat; the foxes may locate their simple den sites in any habitat where they find natural shelter (*e.g.*, brush pile, rock crevice, hollow stump, or log) (Laughrin 1977). All habitat available on the islands on which the fox is found can be and is used by the fox. We are not aware of any existing or anticipated threats to the island habitats. Accordingly, there is currently no information to support a conclusion that any specific habitat within these areas are essential. Therefore, we do not believe that there are areas within the subspecies' habitat that contain features that are essential to the conservation of the species.

Adverse effects to the fox that have occurred in these areas have been a result of activities, such as disease (canine distemper) and predation from golden eagles, which threaten individual island foxes rather than island fox habitat. While the habitat of

island foxes on all islands has been subject to substantial human-induced changes over the past 150 years and these changes have resulted in some adverse effects to island foxes, they are unlikely to have directly caused the observed declines. This species' precarious situation derives mostly from predation on the foxes themselves and disease (canine distemper) and not from any particular action that caused habitat degradation. Furthermore, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth. Because there are no habitat threats to the island foxes, we conclude that no areas require special management considerations or protection. Conservation of the foxes depends on addressing non-habitat related threats.

As discussed, declines have been caused largely by predation and disease, and these effects will be addressed through section 7 consultation with Federal agencies under the jeopardy standard of the Act and through the section 9 prohibitions of the Act to the extent applicable. No benefit would accrue from a critical habitat designation with respect to the effects of predation and disease on individual foxes because the regulatory effects of critical habitat designations apply to adverse modification or destruction of habitat, not to effects that result in mortality of individual foxes. Although not relevant to our determination with regard to critical habitat, we note that the threats that do exist will also be addressed by the conservation actions of the National Park Service (NPS), the Nature Conservancy, and the Catalina Island Conservancy on the islands. Moreover, again because the threats faced by the species are not habitat-based, there would be no informational benefit to the designation.

In accordance with the Act, a critical habitat designation can include areas outside the species' current range if we determine that these areas are essential to the conservation of the species. We have not found any areas outside the current range of the species to be essential for the conservation of the species. Our best data suggests that on all the islands with the exception of San Miguel, the island fox subspecies still occupy all island-based habitat,¹ and

¹ Since the final listing rule was published, 12 captive foxes were released into the wild on Santa Rosa Island; 4 of the 12 were later returned to captivity, and 1 of the 12 was killed by a golden eagle (NPS 2004). Currently, there are at least 7 adult foxes in the wild on Santa Rosa Island and about 50 in captivity (NPS 2004), and thus we now consider Santa Rosa Island to be occupied habitat. However, as with San Miguel Island, the NPS and

thus, there is no area that is located outside the current range of the species on Santa Rosa, Santa Cruz, and Santa Catalina Islands. With respect to San Miguel Island, in 1999, the NPS captured 14 (4 males and 10 females) of the 15 remaining foxes from San Miguel Island to protect the subspecies from further losses from predation by golden eagles and to initiate a captive propagation program. The remaining wild island fox, a lone female, evaded capture efforts until September 2003, when she was captured and brought into captivity. As of 2003, then, there were no island foxes remaining in the wild on San Miguel Island. Four years' captive breeding has increased the captive San Miguel Island fox population to 38 individuals. These individuals are in two captive breeding facilities on San Miguel Island, and the NPS and the recovery team will be releasing some of the foxes back into the wild on San Miguel Island in the next month or two as soon as they are no longer threatened by predation (C. Benz, pers. comm., 2004). Therefore, we are considering all the islands occupied by foxes. If reintroduction does not occur within the next month or two, however, and San Miguel Island is unoccupied for a time longer, we still would find no unoccupied areas essential to the conservation of the fox, as conservation of the foxes is dependent upon removal of predation.

In summary, we do not find any habitat within the islands that meets the definition of critical habitat. Because there is no habitat that meets the definition of critical habitat for the island fox subspecies, there is none to propose, and we are proposing that zero critical habitat be designated.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. This rule does not designate critical habitat. Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis.

the recovery team are considering additional releases of foxes back into the wild on Santa Rosa Island in the next month or two (C. Benz, Service, pers. comm. 2004).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis. If we prepare an economic analysis, our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule does not designate critical habitat for the four island fox subspecies. Therefore, no regulatory effects will derive from this action; it is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), the Service makes the following findings: (a) This rule will not produce a Federal mandate, and (b) we do not believe that this rule will significantly or uniquely affect small governments. Because we are not proposing to designate any areas of critical habitat, this rule will result in no regulatory impact on any entities.

Takings

We are not designating critical habitat in this proposed rule, and therefore, this proposed designation of critical habitat for the four island fox subspecies does not pose significant takings implications.

Federalism

We are not designating critical habitat in this proposed rule, and therefore, this proposed designation of critical habitat for the four island fox subspecies does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are not designating critical habitat in accordance with the provisions of the

Endangered Species Act so this rule does not burden the judicial system.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We are not proposing to designate any areas as critical habitat. It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This

assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not proposing to designate any areas as critical habitat. No tribal lands are essential for the conservation of the San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, and Santa Catalina Island fox.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (*see ADDRESSES* section).

Authors

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) revising the entries for "Fox, San Miguel Island, Santa Catalina Island, Santa Cruz Island, Santa Rosa Island" under "MAMMALS" in the list of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened		Status	When listed	Critical habitat	Special rules
Common name	Scientific name							
MAMMALS								
Fox, San Miguel Island.	<i>Urocyon littoralis littoralis</i> .	U.S.A. (CA)	Entire	E	742	17.97(a) ...	NA	
Fox, Santa Catalina Island.	<i>Urocyon littoralis catalinae</i> .	U.S.A. (CA)	Entire	E	742	17.97(a) ...	NA	
Fox, Santa Cruz Island.	<i>Urocyon littoralis santacruzae</i> .	U.S.A. (CA)	Entire	E	742	17.97(a) ...	NA	
Fox, Santa Rosa Island.	<i>Urocyon littoralis santarosae</i> .	U.S.A. (CA)	Entire	E	742	17.97(a) ...	NA	

3. Amend part 17 by adding a new § 17.97 to read as follows:

§ 17.97 Species for which critical habitat is prudent but not designated.

This section includes animal and plant species for which we have determined critical habitat to be prudent, but for which we did not designate critical habitat under the Act for policy and statutory reasons. We identify these species, their primary constituent elements, and the specific habitat areas essential to their conservation to further public awareness and conservation efforts.

(a) *Animals.* This paragraph (a) identifies the primary constituent elements and specific habitat areas essential to the conservation of animal species for which we determined critical habitat to be prudent but did not designate for policy and statutory reasons. We will list these species in the same order as they appear in § 17.11(h).

(1) Fox, San Miguel Island (*Urocyon littoralis littoralis*).

(i) No primary constituent elements have been identified for the San Miguel Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(2) Fox, Santa Catalina Island (*Urocyon littoralis catalinae*).

(i) No primary constituent elements have been identified for the Santa Catalina Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(3) Fox, Santa Cruz Island (*Urocyon littoralis santacruzae*).

(i) No primary constituent elements have been identified for the Santa Cruz Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(4) Fox, Santa Rosa Island (*Urocyon littoralis santarosae*).

(i) No primary constituent elements have been identified for the Santa Rosa Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(b) [Reserved]

Dated: October 1, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04-22542 Filed 10-6-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT44

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander (*Ambystoma californiense*) in Santa Barbara County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis for the proposed designation of critical habitat for the California tiger salamander (*Ambystoma californiense*) in Santa Barbara County (here after referred to as "California tiger salamander") under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments received on or before November 8, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003, or by facsimile 805/644-3958.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to fw1ctsch@r1.fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for the California tiger salamander in Santa Barbara County by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at <http://ventura.fws.gov/>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Katie Drexhage (telephone 805/549-3811; facsimile 805/549-3233 or Michael McCrary (telephone 805/644-1766; facsimile 805/644-3958), Ventura Fish and Wildlife Office, at the address listed above.

SUPPLEMENTARY INFORMATION:

Background

The California tiger salamander is a large and stocky salamander, with a broad, rounded snout. Adult males may reach a total length of 8.2 inches (in) (20.8 centimeters (cm)) while females are slightly smaller, reaching about 6.8 in (17.3 cm) in length. The top of the salamander can have white or pale yellow spots or bars on a black background. The underside varies from almost uniform white or pale yellow to a varying pattern of white or pale yellow and black. This species is restricted to California and does not overlap with any other species of tiger salamander.

The Santa Barbara County salamanders are geographically separate from all other California tiger salamanders. Historically, the Santa Barbara County California tiger salamanders inhabited low-elevation (below 1,400 feet (427 meters)) vernal pools and ephemeral ponds, and associated coastal scrub, grassland, and oak savannah plant communities of the Santa Maria, Los Alamos, and Santa Rita valleys.

The loss of the California tiger salamander's upland habitat is the single most important factor contributing to the species' status. Additional threats to this species include threats to the aquatic habitat, predation and competition by introduced or non-native species, habitat fragmentation, contaminants, hybridization with non-native tiger salamanders, disease, and over-grazing.

On January 19, 2000, we published an emergency rule to list the Santa Barbara County DPS of the California tiger salamander as endangered (65 FR 3096), concurrently with a proposed rule (65 FR 3110) to list the species as endangered. We published a final rule listing the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). On May 23, 2003, we proposed to list the Central California population of California tiger salamander as a threatened DPS. In the same **Federal Register** notice we also proposed to downlist the Sonoma County DPS and Santa Barbara County DPS of California tiger salamander, from endangered to threatened status (68 FR 28648). The **Federal Register** notice also included a proposed special rule that would exempt existing routine ranching activities from the prohibitions of the Act. On August 4, 2004, we determined threatened status for the California tiger salamander rangewide (69 FR 47212). We also finalized the special rule for the species rangewide, which exempts existing routine ranching activities.

On February 25, 2003, the Environmental Defense Center and Center for Biological Diversity filed a complaint challenging our failure to designate critical habitat for the Santa Barbara County DPS of the California tiger salamander (*Environmental Defense Center et al. v. U. S. Fish and Wildlife Service et al.*, EVCD 03-00195 (C.D.Cal)). By order dated August 7, 2003, the district court ordered us to publish a proposed rule to designate critical habitat for the California tiger salamander. On January 22, 2004, we proposed to designate critical habitat for the Santa Barbara DPS of California tiger salamander (69 FR 3064). Approximately 13,920 acres (5,633