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STATE LISTING OF CALIFORNIA TIGER SALAMANDER WARRANTED

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It was a close call. On March 3, 2010, the California Fish and Game Commission voted 3-2 that listing of the California Tiger Salamander ("CTS") pursuant to the California Endangered Species Act was warranted. The Commission was [under court order](#) to accept the listing petition, which it did [declaring CTS a candidate species](#) just over a year ago. Now that listing has been determined to be warranted, the listing process ensues. The actual listing action for CTS will not be finalized for months, at a minimum. The state action is in addition to the existing protection under the federal Endangered Species Act. Under federal law, the CTS is protected under three separate listing actions—one for the Sonoma population, one for the Santa Barbara population and one for the remainder of the state under the central California population.

The Fish & Game Department ("Department") will initiate the formal listing process by preparing an Initial Statement of Reasons for Regulation Change (or, Pre-publication of Notice Statement) according to Government Code Section 11346.4 for consideration by the Commission. This preparation includes an assessment of the potential for adverse economic impacts. This is likely to occur prior to the next commission meeting, with the document issued at that meeting.

Once approved by the Commission, a 45-day comment period will follow upon publication of the notice of proposed rulemaking in the California Regulatory Notice Register. If the Department modifies the proposed rule following the comment period, then it will notice an additional 15-day comment period on any new material relied upon and on the proposed modifications. The next steps are then adoption by the Commission and review by the Office of Administrative Law. While this process could move quickly, final action could still be many months away in the future.

Until CTS is listed, it remains a candidate species protected by CESA. Since declaring CTS a candidate species last year, the Department has allowed take in limited circumstances under [an emergency rule](#), effective February 23, 2009. See 14 C.C.R. § 749.4. The California Administrative Procedures Act limits the duration of an emergency rule to 180 days plus two 90-day extensions. The Commission extended the emergency rule for CTS first on August 10, 2009 and then on November 9, 2009. This final 90-day extension expired on February 22, 2010.

The Department's November request for reauthorization stated that:

If the Commission decides that listing the California tiger salamander “is warranted,” the former candidate species then becomes a listed species and all activities resulting in take of California tiger salamander currently covered by the 2084 regulation will require an Incidental Take Permit (ITP) pursuant to FGC Section 2081 or another form of take coverage. ITPs are authorized for certain activities if specified criteria are met, including minimization and full mitigation of the impacts of the take. ITPs are issued on a project by-project basis to ensure the mitigation and minimization measures are narrowly tailored to the individual project and protective of the species covered.

Technically, the CTS is not a listed species until the Commission adopts the final rule. Until then, it remains protected as a candidate species, meaning that take of CTS is prohibited under CESA without Department authorization. The need for a Department approval remains even if an action has received an incidental take statement from the Fish and Wildlife Service under the federal Endangered Species Act. The extent to which the Department will take enforcement action in this interim period is uncertain. Unless a new emergency rule is issued, take authorization must be sought on a project-by-project basis under either 2080.1 or 2081 of the Fish and Game Code.

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