

covered by the management plan; we are especially interested in knowing how partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat, and costs associated with designation; and

(c) With specific reference to sections 4(a)(3) and 4(b)(2) of the Act, we request information from the Department of Defense to assist the Secretary of the Interior in making a determination as to whether any proposed critical habitat overlaps with lands, administered by or under the control of the Department of Defense, covered by an Integrated Natural Resources Management Plan (INRMP) that benefits the conservation of the species;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning the proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to [fw1willamettech@fws.gov](mailto:fw1willamettech@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "RIN 1018-AT91" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly (see **ADDRESSES** section). Please note that the Internet address [fw1willamettech@fws.gov](mailto:fw1willamettech@fws.gov) will be unavailable at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the

Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

#### Public Hearing

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearing, please contact the Oregon Fish and Wildlife Office (see **ADDRESSES** above). Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Patti Carroll at 503/231-2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

#### Background

On November 2, 2005, we published a proposed rule in the **Federal Register** (70 FR 66492) to designate approximately 3,089 acres (ac) (1,250 hectares (ha)) as critical habitat for Fender's blue butterfly, 724 ac (293 ha) as critical habitat for *Lupinus sulphureus* ssp. *kincaidii*, and 718 ac (291 ha) as critical habitat for *Erigeron decumbens* var. *decumbens*. The proposed critical habitat is located in Polk, Benton, Yamhill, Lane, Marion, Linn, and Douglas Counties, Oregon, and Lewis County, Washington. The original comment period on the proposed critical habitat rule closed on January 3, 2006.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a timely request received for a public hearing, we are conducting the public hearing on the date and at the address described in the **DATES** and **ADDRESSES** sections above,

and reopening the comment period accordingly.

#### Author

The primary author of this package is Mikki Collins, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service.

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 14, 2006.

#### Matt Hogan,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. E6-5975 Filed 4-20-06; 8:45 am]

**BILLING CODE 4310-55-P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AU58

### Endangered and Threatened Wildlife and Plants; Reinstated Proposed Rule to List the Flat-Tailed Horned Lizard as Threatened

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the reinstated proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). On November 17, 2005, the U.S. District Court for the District of Arizona vacated the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard, remanded the matter to us for further consideration in accordance with its August 30, 2005, and November 17, 2005, orders, and ordered us to make a new listing decision.

Pursuant to the Court's November 17, 2005, order, on remand we "need only address the matters on which the court's August 30, 2005, Order \* \* \* found the January 3, 2003, Withdrawal unlawful, which may summarily be identified as whether the lizard's lost historical habitat renders the species in danger of extinction in a significant portion of its range." To ensure our new final listing decision is based on the best scientific and commercial data currently available, we are reopening the public comment period on the 1993 proposed

listing rule to solicit information and comment regarding the flat-tailed horned lizard's lost historical habitat.

**DATES:** We will accept comments from all interested parties until May 8, 2006. Comments received after the closing date may not be considered in the final decision on this action.

**ADDRESSES:** If you wish to comment on the specific issue identified by the District Court in its November 17, 2005, order for remand of the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (CFWO), 6010 Hidden Valley Road, Carlsbad, CA 92011.

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

3. You may send comments by electronic mail (e-mail) to [fw8CFWocomments@fws.gov](mailto:fw8CFWocomments@fws.gov). Please see Public Comments Solicited section below for more information on submitting a comment by e-mail.

4. You may fax your comments to 760/431-9624.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the CFWO at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the CFWO (see **ADDRESSES** section), by telephone at 760/431-9440, or by facsimile at 760/431-9624.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

To assist us in making a final listing determination based on the best scientific and commercial data available, we are reopening the public comment period on the proposed rule (58 FR 62624; November 29, 1993) to list the flat-tailed horned lizard to accept public comment on the specific issue identified in the District Court's November 17, 2005, order, namely whether the flat-tailed horned lizard's lost historical habitat renders the species likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range.

Comments relevant to the identified issue for consideration during the remand of the January 3, 2003, withdrawal of the proposed rule to list the flat-tailed horned lizard that were previously submitted during prior comment periods on the proposed rule

need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final determination.

Please submit Internet comments in ASCII format and avoid the use of special characters or any form of encryption. Please also include "ATTN: Flat-Tailed Horned Lizard" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our CFWO at phone number 760/431-9440. Please note that this Internet address will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law.

There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

##### **Previous Federal Actions**

On November 29, 1993, we published a proposed rule to list the flat-tailed horned lizard as a threatened species pursuant to the Act (58 FR 62624). On July 15, 1997, we withdrew the 1993 proposed rule (62 FR 37852). Defenders of Wildlife and other groups challenged the 1997 withdrawal decision. On June 16, 1999, the District Court for the Southern District of California granted summary judgment in our favor upholding our decision not to list the flat-tailed horned lizard. However, on July 31, 2001, the Ninth Circuit Court of Appeals reversed the lower court's ruling and directed the District Court to remand the matter back to us for further consideration in accordance with the legal standards outlined in its opinion (*Defenders of Wildlife v. Norton*, 258 F.3d 1136). On October 24, 2001, the

District Court for the Southern District of California remanded the 1997 withdrawal. Consistent with the District Court's remand order, we published a reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and opened a 120-day comment period (66 FR 66384; December 26, 2001). The District Court further ordered us to commence a 12-month schedule for a final listing decision in compliance with the Ninth Circuit Court's order. As a result, we published a withdrawal of the proposed rule to list the flat-tailed horned lizard on January 3, 2003 (68 FR 331). The Tucson Herpetological Society, and other environmental organizations and individuals, challenged this withdrawal decision in the United States District Court for the District of Arizona.

On August 30, 2005, the District Court for the District of Arizona issued an order granting plaintiffs' motion for summary judgment "on the ground that the Secretary's withdrawal of the proposed rule violated the Endangered Species Act and the Ninth Circuit's remand order by failing to evaluate the lizard's lost habitat and whether that habitat was a significant portion of the range." The Service's failure to make this specific determination was the only violation cited by the District Court. The court upheld all other aspects of the January 3, 2003, withdrawal decision. On November 17, 2005, the District Court issued a subsequent order, consistent with its August 30, 2005, order, vacating the 2003 withdrawal and remanding the matter to us for further consideration. The District Court reinstated the 1993 proposed rule to list the flat-tailed horned lizard as a threatened species for the duration of the remand, and ordered us to make a new listing decision by April 30, 2006, stating that, "on remand the agency need only address the matters on which the court's August 30, 2005, Order \* \* \* found the January 3, 2003, Withdrawal unlawful, which may summarily be identified as whether the lizard's lost historical habitat renders the species in danger of extinction in a significant portion of its range." The order indicates that, while the Court believes this determination is required by the Ninth Circuit's opinion, "the Secretary has wide discretion in delineating a significant portion of the lizard's range," including in defining the "range" of the species (which the Court states must include some lost habitat) and in choosing the point in time at which to examine the range. On December 7, 2005, we published a document (70 FR 72776) reinstating the

November 29, 1993, proposed rule to list the flat-tailed horned lizard as a threatened species. On March 2, 2006, we published a document announcing the reopening of a 14-day public comment period on the proposed rule to list the flat-tailed horned lizard under the Act (71 FR 10631). To ensure the public is provided with an adequate opportunity to comment on the matters

identified by the Court, the parties filed a Joint Stipulation with the Court on March 28, 2006, to allow for an additional public comment period. On March 29, 2006, the Court granted our request for an extension of the April 30, 2006, deadline, and ordered us to submit the new final listing determination for the flat-tailed horned lizard to the **Federal Register** on or

before the date six weeks after the close of this additional public comment period. For the reasons outlined in this document, we are now reopening the comment period on the proposed rule for an additional 16 days.

For your convenience, here is a list of the primary **Federal Register** documents pertaining to the proposed listing of the flat-tailed horned lizard as threatened:

Action	Date	FR citation
Proposed rule to list the flat-tailed horned lizard as threatened .....	November 29, 1993 .....	58 FR 62624.
Withdrawal of proposed rule .....	July 15, 1997 .....	62 FR 37852.
Reinstatement of proposed rule; reopening of comment period .....	December 26, 2001 .....	66 FR 66384.
Withdrawal of proposed rule .....	January 3, 2003 .....	68 FR 331.
Reinstatement of proposed rule .....	December 7, 2005 .....	70 FR 72776.
Reopening of comment period .....	March 2, 2006 .....	71 FR 10631.

**Background**

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small, cryptically colored, phrynosomatid lizard that reaches a maximum adult body length (excluding the tail) of approximately 87 millimeters (3.4 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The dorsal surface of the flat-tailed horned lizard is pale gray to light rusty brown. The ventral side is white and unmarked, with the exception of a prominent umbilical scar.

The flat-tailed horned lizard is endemic (restricted) to the Sonoran Desert in southern California, Arizona, and northwestern Mexico. The species is documented in the Coachella Valley in Riverside County, California; the Imperial and Borrego Valleys in Imperial and eastern San Diego Counties, California; south of the Gila River and west of the Gila and Butler Mountains in Yuma County, Arizona; east of the Sierra de Juarez in the Laguna Salada and Yuha Basins in northeastern Baja California Norte, Mexico; and north and west of Bahia de

San Jorge to the delta of the Colorado River in northwestern Sonora, Mexico (Grismer 2002; Rodriguez 2002). The flat-tailed horned lizard occurs at elevations up to 800 meters (2,600 feet) above sea level, but most populations are below 300 meters (980 feet) elevation. Various descriptions and estimates of the historical and current ranges of the flat-tailed horned lizard are described in the November 29, 2003, proposed rule (58 FR 62624); July 15, 1997, withdrawal of the 1993 proposed rule (62 FR 37822); and January 3, 2003, withdrawal of the 1993 proposed rule (68 FR 331).

In 2003, the Flat-tailed Horned Lizard Interagency Coordinating Committee released a revised version of the 1997 Flat-tailed Horned Lizard Rangewide Management Strategy (Flat-tailed Horned Lizard Interagency Coordinating Committee 2003). The 2003 Rangewide Management Strategy includes a map of the approximate historical and current range boundaries of the flat-tailed horned lizard. Using the geographic information system shape files used to develop the range map, we calculated the area of the historical and current ranges of the flat-tailed horned lizard in the United States and Mexico. Based on this information, we estimated the historical range (United States and

Mexico) to be approximately 6,183,647 acres (2,502,433 hectares), which with the exclusion of the historic Lake Cahuilla would be reduced to approximately 4,874,238 ac (1,972,534 ha), and the current range (United States and Mexico) to be approximately 3,962,543 acres (1,603,884 hectares). A copy of this report can be viewed on the Carlsbad Fish and Wildlife Office's Web site at <http://www.fws.gov/carlsbad/>.

For additional background information and previous Federal actions related to the listing determinations for the flat-tailed horned lizard, please refer to the January 3, 2003, **Federal Register** notice (68 FR 331).

**Author**

The primary author of this notice is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 7, 2006.

**Marshall Jones, Jr.,**

*Deputy Director, U.S. Fish and Wildlife Service.*

[FR Doc. E6-5895 Filed 4-20-06; 8:45 am]

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