

an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electric copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "et form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the filing. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Interested parties may file comments by using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Commission will consider all relevant and timely comments prior to taking final action in this proceeding. To file formally, interested persons must file an original and four copies of all comments, reply comments, and supporting comments. Those who want each Commissioner to receive a personal copy of their comments should file an original plus nine copies. Comments and reply comments should be sent to the Office

of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Persons not filing via ECFS are encouraged to file a copy of all pleadings on a 3.5-inch diskette in Word 97 format.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Interested persons may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, send an e-mail to ecfs@fcc.gov, including the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

Those filing paper comments must submit an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, and Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. Comments are also available on the ECFS, at https://gullfoss2.fcc.gov/cgi-bin/websql/prod/ecfs/comsrch_v2.hts.

III. Ordering Clauses

Pursuant to the authority contained in sections 1, 4(i), 4(j), 7(a), 301, 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 157(a), 301, 303(f), 303(g), and 303(r), GCI's Petition for Rulemaking filed on January 10, 1990 *is granted* and this *Notice of Proposed Rulemaking is adopted*.

It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking* to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A151

Endangered and Threatened Wildlife and Plants; Listing of the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reinstated proposed rule; reopening of comment period and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed listing of the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The reopened comment period will allow all interested parties to submit written comments on the proposal. Comments previously submitted need not be resubmitted as they have been incorporated into the public record and will be fully considered in the final determination. Additionally, we are announcing that public hearings will be held on the proposed listing determination. Because of budgetary constraints, we are only able to hold public hearings on June 19, 2002, as described below. We welcome all substantive comments and want to stress that written comments on the proposal are given equal consideration as verbal comments presented at the public hearings.

DATES: The original public comment period on the proposed listing determination closed on June 9, 1997, and the second comment period on the reinstated proposed listing determination closed on April 25, 2002. The public comment period is reopened, and we will accept comments until July 29, 2002. Comments must be received by 5:00 p.m. on the closing date. Any comments that are received after the closing date may not be considered in the final decision on this action. The public hearings will be held on June 19, 2002, from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. in El Centro, California.

ADDRESSES: *Public Hearings:* The public hearings will be held at Southwest High School Performing Arts Theatre, 2001 Ocotillo Drive, El Centro, CA.

Comments: If you wish to comment on the reinstated proposed rule or provide additional information concerning the status and distribution of

the species, as well as information pertaining to threats to the species or its habitat, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand delivery to Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

2. You may send comments by electronic mail (e-mail) to fthl@r1.fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message. Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at telephone number 760/431-9440.

Document Availability: Comments and materials received, as well as supporting documentation used in the preparation of the proposed rule and subsequent withdrawal, and additional information obtained since the withdrawal that will be used for this final determination are available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the above address.

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Branch Chief, Listing, or Sandy Vissman, Wildlife Biologist, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section; telephone 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION: The flat-tailed horned lizard is a small, cryptically colored lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 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 upper surface of the flat-tailed horned lizard is pale gray to light rusty brown. The underside 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 and Arizona and in northern Mexico. The species inhabits desert areas of southern Riverside, eastern San Diego, and

Imperial counties in California; southwestern Arizona; and adjacent regions of northwestern Sonora and northeastern Baja California Norte, Mexico. Within the United States, populations of the flat-tailed horned lizard are concentrated in portions of the Coachella Valley, Ocotillo Wells, Anza Borrego Desert, West Mesa, East Mesa, and the Yuma Desert in California; and the area between Yuma and the Gila Mountains in Arizona. The flat-tailed horned lizard occurs at elevations up to 520 meters (m) (1,700 feet (ft)) above sea level, but most populations are below 250 m (820 ft) elevation.

According to Hodges (1997), approximately 51.2 percent of the historic range of the flat-tailed horned lizard habitat within the United States remains. This remaining habitat includes an estimated 503,500 hectares (ha) (1,244,000 acres (ac)) of habitat in the United States, of which approximately 56,800 ha (140,300 ac) occur in Arizona and 446,670 ha (1,103,800 ac) occur in California. Within this range, the lizard typically occupies sparsely vegetated, sandy desert flatlands with low plant species diversity, but it is also found in areas with small pebbles or desert pavement, mud hills, dunes, alkali flats, and low, rocky mountains.

Based on information obtained since the withdrawal of the proposed listing rule and the information documented in the proposed rule itself, threats to the flat-tailed horned lizard may include one or more of the following: commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, military activities, introduction of nonnative plants, pesticide use, and border patrol activities along the United States-Mexico border.

In 1982, we first identified the flat-tailed horned lizard as a category 2 candidate species for listing under the Act (47 FR 58454). Service regulations defined category 2 candidate species as "taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules." In 1989, we elevated the species to category 1 status (54 FR 554). Category 1 included species "for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule." Subsequently, 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 May 16, 1997, in response to a lawsuit filed by the Defenders of Wildlife to compel us to make a final listing determination on the flat-tailed horned lizard, the United States District Court for the District of Arizona ordered us to issue a final listing decision within 60 days. A month after the District Court's order, several State and Federal agencies signed a Conservation Agreement (CA) implementing a recently completed range-wide management strategy to protect the flat-tailed horned lizard. Pursuant to the CA, cooperating parties agreed to take voluntary steps aimed at "reducing threats to the species, stabilizing the species' populations, and maintaining its ecosystem."

On July 15, 1997, we issued a final decision to withdraw the proposed rule to list the flat-tailed horned lizard as a threatened species (62 FR 37852). The withdrawal was based on three factors: (1) population trend data did not conclusively demonstrate significant population declines; (2) some of the threats to the flat-tailed horned lizard habitat had grown less serious since the proposed rule was issued; and (3) the belief that the recently approved "conservation agreement w[ould] ensure further reductions in threats."

Six months following our withdrawal of the proposed listing rule, the Defenders of Wildlife filed a lawsuit challenging our decision. On June 16, 1999, the United States 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. On October 24, 2001, the District Court ordered us to reinstate the previously effective proposed listing rule within 60 calendar days and to make a final listing decision within 12 months of reinstating the proposed listing. On December 26, 2001, we published a notice announcing the reinstatement of the 1993 proposed listing of the flat-tailed horned lizard as threatened and the opening of a 120-day public comment period on the reinstated proposed rule (66 FR 66384).

This notice announces the reopening of the public comment period on this proposed rulemaking. The public comment period is being opened for 60 days to hold public hearings on the proposed listing of the flat-tailed horned

lizard as a threatened species, accept public comment on the reinstated proposed rule, and collect updated information concerning its ecology and distribution, threats, conservation/management actions, and any additional available information to assist us in making a final listing determination based on the best scientific and commercial data available.

We are specifically seeking information about the flat-tailed horned lizard and its habitat concerning: (1) threats to the species as a whole or to

local populations and its habitat, (2) the size, number, and/or distribution of known populations, (3) sufficiency of current conservation/management and regulatory mechanisms for the flat-tailed horned lizard and its habitat, and (4) the conservation value of different populations across the range of the species.

Author

The primary author of this notice is Douglas Krofta, 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: May 3, 2002.

Thomas O. Melius,

Acting Director, Fish and Wildlife Service.

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