

**List of Subjects in 45 CFR Part 2522**

Grant programs-social programs, Reporting and recordkeeping requirements, Volunteers.

For the reasons stated in the preamble, the Corporation for National and Community Service proposes to amend chapter XXV, title 45 of the Code of Federal Regulations as follows:

**PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS**

1. The authority citation for part 2522 continues to read as follows:

**Authority:** 42 U.S.C. 12571–12595.

2. Amend § 2522.240 by revising paragraph (b)(2)(ii) to read as follows:

**§ 2522.240 What financial benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application to the Corporation, and may not be included in a State's application for AmeriCorps program funds distributed by formula under § 2521.30(a)(2) of this chapter.

\* \* \* \* \*

Dated: February 24, 2006.

**Frank R. Trinity,**

*General Counsel.*

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**BILLING CODE 6050--SS-P**

**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.

**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 by April 30, 2006. 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 March 16, 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 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.

4. You may fax your comments to 760–431–9624.

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. 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 CFWO at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address, 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 to list the flat-tailed horned lizard for 14 days 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.

**Background**

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 notice reinstating the November 29, 1993, proposed rule to list the flat-tailed horned lizard as a threatened species. For reasons outlined in this notice, we are now reopening the comment period on the proposed rule. 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.

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: February 17, 2006.

**Marshall Jones, Jr.,**

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

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