

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.

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Dated: February 24, 2006.

Frank R. Trinity,

General Counsel.

[FR Doc. E6–2935 Filed 3–1–06; 8:45 am]

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. 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.

[FR Doc. E6-3005 Filed 3-1-06; 8:45 am]

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