

illegal drive-through traffic along the United States-Mexico border. These threats and their effects on flat-tailed horned lizards and their habitat are discussed in further detail in the section "Summary of Factors Affecting the Species."

#### Previous Federal Action

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 District Court in 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 CA implementing a recently completed rangewide 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). We based the withdrawal 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) we believed 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 District Court for the Southern

District of California granted summary judgement 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. The case was remanded back to us because (1) the withdrawal did not expressly consider whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the withdrawal did not "address the lizard's viability in a site-specific manner with regard to the putative benefits of the Conservation Agreement."

On October 24, 2001, the District Court ordered us to reinstate the previously effective proposed listing rule within 60 calendar days and, thereafter, commence a 12-month statutory time schedule for a final listing decision, and render our final listing determination in compliance with the mandate of the Ninth Circuit Court's order. Accordingly, we published a notice on December 26, 2001, 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).

In compliance with our requirements and for the purpose of adequately soliciting public comment, we published legal notices of the reinstatement of the 1993 proposed rule and the opening of the public comment period in the *San Diego Union Tribune* on January 7, 2002; *Imperial Valley Press* on January 7, 2002; *The Desert Sun* on January 8, 2002; and *The Yuma Daily Sun* on January 7, 2002; inviting the general public to comment. On May 30, 2002, we published a notice reopening the public comment period for an additional 60 days (67 FR 37752) and announced that we would be holding public hearings from 1 to 3 p.m. and from 6 to 8 p.m. on June 19, 2002, in El Centro, California. Additionally, on May 30, 2002, we published public notices in the *San Diego Union Tribune*, *Imperial Valley Press*, and *The Desert Sun*, announcing the June 19, 2002, public hearings in El Centro, California.

On September 24, 2002, we published an additional notice (67 FR 59809) announcing the reopening of the public comment period for 15 days to allow for peer review, additional public comment on the proposed rule, and submittal of information that has become available

since our 1997 withdrawal. In this current final determination to withdraw our proposal to list the flat-tailed horned lizard as threatened, we address the Court's order that we determine: (1) Whether the flat-tailed horned lizard is likely to become an endangered species within the foreseeable future in a significant portion of its range; and (2) the lizard's viability in a site-specific manner with regard to the putative benefits of the CA.

#### Summary of Comments and Recommendations

In the 3 notices announcing the public comment periods, we requested all interested parties to submit the following types of information pertaining to the flat-tailed horned lizard: current status, ecology, distribution, threats, and management/conservation efforts in place. We requested this information in order to make a new final listing determination based on the best scientific and commercial data currently available. During the three public comment periods, we received written comments from a total of 58 entities, and 10 speakers gave verbal comments at the public hearings.

Substantive information provided in all public comments either has been incorporated directly into this withdrawal or is addressed below. Similar comments are grouped together.

**Comment 1:** One commenter supported the listing of several populations of flat-tailed horned lizards, including the population in the Coachella Valley and Arizona. The commenter further stated that independent of the proposal to list the flat-tailed horned lizard as a threatened species rangewide, the Coachella Valley population must be listed as an endangered species.

**Our Response:** In our 1993 proposed rule, we proposed to list the flat-tailed horned lizard as a threatened species throughout its range.

However, under the Act and our regulations, a species will still warrant listing if it is threatened or endangered in a significant portion of its range. As discussed in the "Finding" section of this withdrawal, we have determined that the flat-tailed horned lizard is not threatened throughout all or a significant portion of its range.

We considered whether the flat-tailed horned lizard population in the Coachella Valley would warrant listing pursuant to our joint Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). According to this policy,