

D. The Inadequacy of Existing Regulatory Mechanisms

Existing mechanisms that could provide some protection for the flat-tailed horned lizard include the following: (1) State laws, including the California Endangered Species Act (CESA) and CEQA, and the Arizona State List of Wildlife of Special Concern and Arizona Game and Fish Commission Order 43; (2) Federal laws and regulations, including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and the Fish and Wildlife Coordination Act; (3) local land use processes and ordinances; (4) the Flat-Tailed Horned Lizard Rangewide Management Strategy and associated Conservation Agreement; (5) regional planning efforts such as the Coachella Valley Multi-Species Habitat Conservation Plan; and (6) foreign laws and regulations in Mexico, including the Mexican Endangered Species List.

The State of California considers the flat-tailed horned lizard a species of special concern, but it is not listed as threatened or endangered under CESA. Consequently, the species receives no protection under CESA. In California, the management of Anza-Borrego Desert State Park is favorable for the conservation of the flat-tailed horned lizard because of the emphasis placed on resource protection and regulations limiting OHV activity to designated trails.

The States of California and Arizona prohibit the collection of flat-tailed horned lizards pursuant to California Code of Regulations, Title 14, Section 5.60, and Arizona Game and Fish Commission Order 43, except by permit. The AGFD has included the species on the draft List of Wildlife of Special Concern in Arizona, which Arizona uses to prioritize species for planning and funding purposes. No state regulations in Arizona protect the habitat of this species at this time.

CEQA requires review of any project that is undertaken, funded, or permitted by a State or local governmental agency. If a project with potential impacts on the flat-tailed horned lizard were reviewed, CDFG personnel could determine that, although not listed, the lizard is a *de facto* endangered, threatened, or rare species under section 15380 of CEQA. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or deciding that overriding considerations make mitigation infeasible (CEQA Sec. 21002). In the latter case, projects may

be approved that cause significant environmental damage, such as destruction of listed endangered species or their habitat. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the agency involved.

The flat-tailed horned lizard may receive some level of protection through the Act because of overlapping ranges or proximity to other federally listed species in California. These species include Coachella Valley fringe-toed lizard (*Uma inornata*), Coachella Valley milk-vetch (*Astragalus lentiginos* var. *coachellae*), Pierson's milk-vetch (*Astragalus magdalenae* var. *peirsonii*), bighorn sheep in the Peninsular Ranges (*Ovis canadensis*), and desert tortoise (*Gopherus agassizii*).

The federally threatened Coachella Valley fringe-toed lizard is restricted to the Coachella Valley, but its distribution overlaps with the northern portion of the flat-tailed horned lizard's range in the Coachella Valley. However, the flat-tailed horned lizard may use additional habitat within the Coachella Valley in which the fringe-toed lizard does not occur. In addition, the majority of suitable habitat in the Coachella Valley in which both the fringe-toed lizard and flat-tailed horned lizard occur is not protected. Only 2,150 ha (5,314 ac) of suitable flat-tailed horned lizard habitat is protected as part of the Coachella Valley Fringe-toed Lizard Preserve System (Coachella Valley Mountains Conservancy 2001). The federally endangered Coachella Valley milk-vetch also co-occurs with the flat-tailed horned lizard only within the Coachella Valley and offers no additional conservation beyond that provided by the fringe-toed lizard. However, projects in which there is a Federal action that may affect one or both these species are subject to Section 7 consultation with the Service under the Act. Section 7 consultations on the Coachella Valley fringe-toed lizard and/or Coachella Valley milk-vetch may indirectly provide ways to avoid or minimize adverse impacts to the flat-tailed horned lizard in addition to the targeted species.

The federally endangered bighorn sheep of the Peninsular Ranges and flat-tailed horned lizards may overlap in habitat use at the edge of both of their ranges, where there is suitable habitat for both species in close proximity to the toe of slope of the mountains. However, the benefit to the flat-tailed horned lizard provided by the protection of bighorn sheep in the Peninsular Ranges is inconsequential.

The federally endangered Pierson's milk-vetch is restricted to the Algodones

Dunes, in which the flat-tailed horned lizard occurs in low numbers (Wright 2002), therefore offering little protection to the flat-tailed horned lizard. The range of the federally threatened desert tortoise may marginally overlap with the flat-tailed horned lizard in certain parts of the Coachella Valley, near the east side of the Salton Sea and the east side of the Algodones Dunes; however, no conservation value to the flat-tailed horned lizard should be expected.

Through NEPA and the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from Federal projects and water development projects authorized by the U.S. Army Corps of Engineers.

The Management Strategy/CA has been the main regulatory mechanism established for the conservation of the flat-tailed horned lizard throughout its range. The Management Strategy/CA was signed in 1997 and included an extensive list of planning actions developed as recommendations to management agencies to ensure population viability within each MA (Foreman 1997). A caveat of the Management Strategy, however, was that the implementation of these actions is subject to availability of funds and compliance with all applicable regulations. In addition, the CA is a voluntary agreement to implement the Management Strategy; a signatory agency may withdraw from the CA after giving the other signatories 60 days' notice.

Some of the planning actions have not yet been implemented. The planning action to "limit vehicle access and limit route proliferation within MAs," has not been achieved. No action has been taken regarding the planning subactions to designate all routes either open, closed, or limited; and to reduce open and limited route density in MAs (Shroufe in litt. 2002, Wright in litt. 2002), despite these subactions' being "priority 1" actions. Priority 1 actions are defined in the Management Strategy (Foreman 1997) as "action[s] that must be taken in the near term to conserve the species and prevent irreversible population declines." The lack of enforcement to ensure closed and limited use areas is the primary deficiency of Management Strategy implementation. Should future research demonstrate that OHV use poses a significant threat to the species, these deficiencies may need to be corrected to avoid the species being listed in the future.

While some important planning actions in the Management Strategy have not yet been implemented, the