

STAFF SUMMARY FOR DECEMBER 7-8, 2016

25. FLAT-TAILED HORNED LIZARD**Today's Item**Information Action

Consider whether to add flat-tailed horned lizard (*Phrynosoma mcallii*) to the list of endangered species under California Endangered Species Act (CESA) and, if FGC determines that listing is warranted, authorize staff to publish notice of its intent to amend Section 670.5, Title 14, CCR.

Summary of Previous/Future Actions

- | | |
|---|---------------------------------|
| • Received petition | Jun 10, 2014 |
| • FGC transmitted petition to DFW | Jun 12, 2014 |
| • Published notice of receipt of petition | Jul 11, 2014 |
| • Approved DFW's request 30-day extension for evaluation | Oct 8, 2014 |
| • Received DFW's evaluation of petition | Dec 3, 2014; Van Nuys |
| • FGC determined listing may be warranted | Feb 12, 2015; Sacramento |
| • Approved DFW's request for six month extension | Feb 11, 2016; Sacramento |
| • Received DFW's status review report | Oct 19-20, 2016; Eureka |
| • Today take action to determine if listing is warranted | Dec 7-8, 2016; San Diego |

Background

DFW's final, written review of the status of the flat-tailed horned lizard is based upon the best scientific information available to DFW. The [status review report](#) contains DFW's recommendation on the petition to **not** list flat-tailed horned lizard as endangered under the CESA.

Significant Public Comments

1. Email from Lisa Belenky representing Center for Biological Diversity (CBD) requesting that FGC schedule the hearing for December and also continue the hearing to the February 2017 meeting to allow additional time for all interested persons to provide additional comments and information to FGC regarding this petition (Exhibit 3).
2. Letter from Assemblymember Jones supporting DFW's recommendation to not list flat-tailed horned lizard as an endangered species (Exhibit 4).
3. Letter from Noelle Cremers representing California Farm Bureau Federation supporting DFW's recommendation to **not** list flat-tailed horned lizard as an endangered species (Exhibit 5).
4. Letter from CBD stating why the DFW's status review is deficient and opposing DFW's recommendation to not list flat-tailed horned lizard as an endangered species (Exhibit 7).
5. Letter from Department of the Navy Southwest Region opposed to the listing of the flat-tailed horned lizard as an endangered species (Exhibit 8).
6. Letter from U.S. Bureau of Reclamation Yuma Area Office opposed to the petitioned action (Exhibit 9).

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7. Letter from U.S. Bureau of Land Management El Centro Field Office regarding conservation efforts (Exhibit 10)
8. Letters from the Flat-tailed Horned Lizard Management Oversight Group outlining flat-tailed horn lizard management activities (Exhibit 11)

Recommendation

FGC staff: Staff agrees with DFW findings and supports DFW's recommendation to not list flat-tailed horned lizard as an endangered species.

DFW: DFW recommends that listing flat-tailed horned lizard as endangered is not warranted.

Exhibits

1. Link: [Petition to List Flat-Tailed Horned Lizard as Endangered under CESA](#)
2. Link: [DFW memo and Status Review Report](#)
3. [Email from CBD, received Oct 10, 2016](#)
4. [Letter from Assemblymember Jones, received Nov 7, 2016](#)
5. [Letter from Noelle Cremers, received Nov 21, 2016](#)
6. [DFW presentation](#)
7. [Email from CBD, received Nov 22, 2016](#)
8. [Letter from Department of the Navy, dated Feb 5, 2016](#)
9. [Letter from U.S. Bureau of Reclamation to DFW, received Sep 16, 2015](#)
10. [Letter from U.S. Bureau of Land Management to DFW, dated Jun 8, 2015](#)
11. [Letters from Flat-tailed Horned Lizard Management Oversight Group, dated Apr 15, 2016](#)

Motion/Direction

Moved by _____ and seconded by _____ that the Commission, pursuant to Section 2075.5 of the Fish and Game Code, finds the information contained in the petition to list flat-tailed horned lizard and the other information in the record before the Commission **warrants** listing flat-tailed horned lizard as an endangered species under the California Endangered Species Act. (Note: Findings will be adopted at a future meeting.)

AND

Moved by _____ and seconded by _____ that the Commission, authorizes publication of its intent to amend Section 670.5, Title 14, CCR, to add flat-tailed horned lizard to the list of animals of California declared to be endangered.

OR

Moved by _____ and seconded by _____ that the Commission, pursuant to Section 2075.5 of the Fish and Game Code, finds that the information contained in the petition and other information before the Commission **does not warrant** listing flat-tailed horned lizard as an endangered species under the California Endangered Species Act. (Note: Findings will be

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adopted at a future meeting.)

OR

Moved by _____ and seconded by _____ that the Commission, pursuant to Section 2075.5(d) of the Fish and Game Code, continues both the public hearing and the meeting on the petition to the February 2017 meeting.

From: [Lisa Belenky](#)
To: [FGC](#)
Cc: [Bogdan, Wendy@Wildlife](#); [Morey, Sandra@Wildlife](#); [Lehr, Stafford@Wildlife](#); [Mayfield, Rick@Wildlife](#); "[Ileene Anderson](#)"
Subject: RE: Flat-tailed Horned Lizard Petition; Request for Hearing to Be Scheduled in both December 2016 and February 2017
Date: Tuesday, October 25, 2016 2:31:28 PM

Executive Director Valerie Termini, After discussing the continuance with Department staff, and considering the benefit of having at least one hearing on this petition in Southern California where the species lives, the Center would like to amend our request. The Center requests that the Commission schedule the hearing on the Flat-tailed horned lizard petition for December Commission meeting and also continue the hearing to the February 2017 meeting to allow additional time for all interested persons to provide additional comments and information to the Commission regarding this petition.

Thank you and please let me know if you have any questions about this request.

Lisa T. Belenky, *Senior Attorney*
CENTER for BIOLOGICAL DIVERSITY
1212 Broadway, Suite 800
Oakland, CA 94612
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From: Lisa Belenky [mailto:lbelenky@biologicaldiversity.org]
Sent: Tuesday, October 25, 2016 11:09 AM
To: 'FGC'
Cc: 'Bogdan, Wendy@Wildlife'; 'Morey, Sandra@Wildlife'; 'Lehr, Stafford@Wildlife'; 'Mayfield, Rick@Wildlife'; 'Ileene Anderson'
Subject: RE: Flat-tailed Horned Lizard Petition; Request for Hearing to Be Scheduled in February 2017

Executive Director Valerie Termini,

I am writing on behalf of the Center for Biological Diversity regarding our petition to list the Flat-tailed horned lizard. Because the status report for this species was provided by the Department to the Commission at the October meeting, we understand that pursuant to Fish and Game Code section 2075 the final consideration of the petition could be scheduled for the December Commission meeting. However, the Center would appreciate having additional time to review the lengthy and detailed status report and peer reviews, as well as the underlying data and information, before the final consideration of the petition by the Commission. Therefore, the Center respectfully requests that final consideration of the petition be continued from the December meeting and scheduled for the February 2017 meeting.

Thank you for considering this request. Please do not hesitate to contact me if you have any questions regarding this request.

Lisa T. Belenky, *Senior Attorney*
CENTER for BIOLOGICAL DIVERSITY
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Oakland, CA 94612
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From: FGC [<mailto:FGC@fgc.ca.gov>]
Sent: Thursday, October 6, 2016 4:41 PM
To: LBelenky@biologicaldiversity.org
Cc: Bogdan, Wendy@Wildlife; Morey, Sandra@Wildlife; Lehr, Stafford@Wildlife; Mayfield, Rick@Wildlife
Subject: Flat-tailed Horned Lizard Petition

Ms. Belenky, please see the attached letter from Executive Director Valerie Termini regarding the subject petition.

Thank you,

Sheri Tiemann

Sheri Tiemann
Fish and Game Commission
1416 Ninth Street, Suite 1320
Sacramento, CA 95814
(916) 654-9872

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Assembly California Legislature



BRIAN W. JONES
CHAIRMAN, ASSEMBLY REPUBLICAN CAUCUS
ASSEMBLYMAN, SEVENTY-FIRST DISTRICT

COMMITTEES
VICE CHAIR: NATURAL RESOURCES
APPROPRIATIONS
ASSEMBLY LEGISLATIVE ETHICS
BUSINESS AND PROFESSIONS
RULES
JOINT LEGISLATIVE AUDIT

October 21, 2016

Ms. Valerie Termini
Executive Director, Fish and Game Commission
1416 9th Street, 12th Floor
Sacramento, CA 95814

RE: CDFW Recommendation as it pertains to the Flat Tailed Horned Lizard

Dear Ms. Termini:

I would like to register my support of the CDFW Recommendation that the Flat Tailed Horned Lizard (FTHL) NOT be listed as endangered or threatened. Multiple agencies have been involved in studying the FTHL and have concluded that the science simply does not support listing that species as either endangered or threatened. This multi-agency effort was thorough and will remain committed to ongoing research and conservation. I strongly urge the Commission to follow the science.

I know that my constituents are anxious to return to Ocotillo Wells SVRA and are also excited to hold events there again, as they have been unable to for the last several seasons. I will be carefully following the actions of the Commission and urge you to act swiftly as there is nothing further that needs to be studied. The public should be allowed access to the recreation area as soon as possible, especially now that the heat of summer has passed.

I would like to thank the Commission and the Commissioners for accepting the findings and would sincerely appreciate you going forward with the recommendation that the Flat Tailed Horned Lizard not be listed as endangered or threatened.

Sincerely,

BRIAN W. JONES
Assemblyman, 71st District

Cc: **Fish and Game Commissioners**
John Laird, Secretary, Natural Resources Agency
Mat Fuzie, Deputy Director, OHV Division
Lisa Mangat, Director California State Parks

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CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127-11TH STREET, SUITE 626, SACRAMENTO, CA 95814 • PHONE (916) 446-4647

November 21, 2016

Eric Sklar, President
California Fish and Game Commission
1416 9th Street, Room 1320
Sacramento, CA 95814

RE: Item 25: Consider the petition, Department's status review report, and comments received to determine whether listing the flat-tailed horned lizard (*Phrynosoma mcallii*) as endangered species is warranted

Dear President Sklar:

The California Farm Bureau Federation (Farm Bureau) appreciates the opportunity to provide comments on the proposal to list the flat-tailed horned lizard (FTHL) as an endangered species. Farm Bureau represents more than 48,000 members as it strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources. Our members within the FTHL's range will be negatively impacted by a listing, and it is for this reason that Farm Bureau is submitting comments and respectfully requests the Fish and Game Commission (Commission) not list the FTHL as an endangered species under the California Endangered Species Act (CESA).

Farmers in Imperial and Riverside Counties farm more than 800,000 acres of agricultural land. Imperial County, along with Yuma County in Arizona, produces approximately 90 percent of the nation's winter vegetables. Imperial and Riverside County farmland is under increasing pressure for solar development and further land-use restrictions on undeveloped lands would lead to additional pressure to develop farmland for this purpose. Imperial County has already lost 20,000 acres of prime farmland to development over the past seven years. Farm Bureau believes listing the FTHL would lead to further loss of farmland.

Significant energy and resources have been expended towards the conservation of FTHL by myriad agencies, organizations, and individuals. This is evidenced by the completion of the FTHL Rangewide Management Strategy (RMS) adopted by Anza-Borrego State Park, Arizona Game and Fish, California Department of Fish and Wildlife, California State Parks/Ocotillo Wells, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, U.S. Marine Corps Air Station, U.S. Naval Air Facility, and the U.S. Navy SW Division. This Management Strategy includes numerous conservation measures, which have been implemented since 1997. This effort is recognized by the Department of Fish and Wildlife (Department) in its status review, which recommends against listing the FTHL. Farm Bureau concurs with this recommendation.

The Department recognizes that existing environmental review under both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and

November 21, 2016

Page 2

continued implementation of the RMS and the Coachella Valley Multiple Species Habitat Conservation Plan should provide the necessary protections for FTHL and prevent the need for additional protections under CESA. Farm Bureau believes that utilizing cooperative efforts to protect species is a more successful way of achieving long-term conservation than listing under CESA. People generally are more willing to implement beneficial conservation efforts when done cooperatively rather than being forced into an action. Farm Bureau believes the ongoing effort to conserve FTHL will ultimately be more beneficial to the species than a listing under CESA.

Again, Farm Bureau appreciates the opportunity to comment on this important issue and urges the Commission to determine that listing of the FTHL is not warranted under CESA.

Sincerely,

A handwritten signature in cursive script, appearing to read "Noelle Cremers".

Noelle G. Cremers
Director, Natural Resources and Commodities

CC: Members, Fish and Game Commission
Valerie Termini, Executive Director, Fish and Game Commission
Mr. Chuck Bonham, Director, Department of Fish and Wildlife

A Status Review of the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) in California



Laura Patterson
Wildlife Branch, Nongame Wildlife Program
December 8, 2016



Presentation Overview

- Species Description and Life History
- Habitat
- Range and Distribution
- Listing History
- Threats
- Population Trends
- Existing Management
- Key Findings
- Recommendations

Species Description

- Genus *Phrynosoma* (= toad body)
- Long “horns”
- Mid-dorsal stripe
- Dorsolateral spots
- No external ears
- Long flattened tail



Life History

- Short-lived
- Long activity period
- Low productivity
- Dietary specialist
- Large home range
- Not territorial
- Predator avoidance
- Boom and bust population dynamics



High Quality Habitat

- Low relief
- Windblown sand
- Sandy soils
- Creosote-bursage



Photo: Gary Nafis

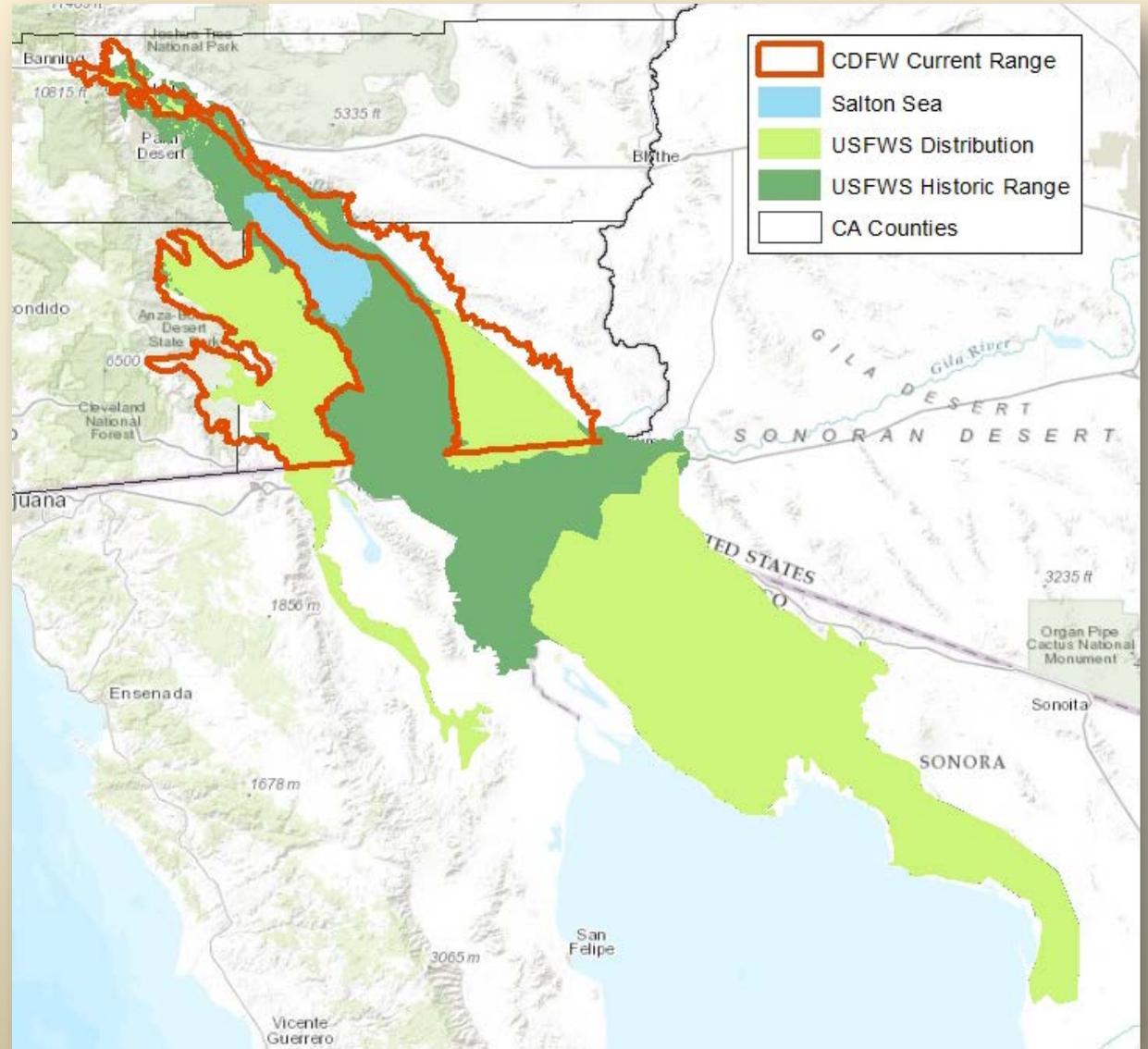
Other Habitat Associations

- Mudhills
- Barren clay
- Vegetated edges of active dunes
- Gravel flats
- Stabilized dunes



Range and Distribution

- Smallest U.S. horned lizard range
- Range reduction in California
- Distribution reduction in Coachella Valley, Riverside Co.



Listing History

- 1988-1989: CDFG
 - Petitioned for Endangered status under CESA
 - Department recommended Threatened status
 - Commission voted not to list
 - Insufficient information on population densities
- 1993-2011: USFWS
 - “Not warranted” determinations (1997, 2003, 2006, 2011)
 - Interagency Conservation Agreement and FTHL Rangewide Management Strategy (RMS) in 1997
- 2014-2016: CDFW
 - Petitioned for Endangered status
 - Advanced to candidacy in 2015

Threats

- Renewable energy development
- Urban development
- Mining
- Road mortality
- Off-highway vehicle use
- U.S.-Mexico border activities
- Human-subsidized predation
- Invasive plants
- Climate change

Threats

- Urban Development
 - Near existing development and Salton Sea
- Renewable Energy Development
 - Solar, geothermal, transmission lines
- Mining
 - Sand and gravel, mostly depleted



Threats

- Road Mortality
 - Well-traveled roads → decreased FTHL densities
- Off-highway Vehicle (OHV) Use
 - Direct mortality, habitat degradation
- U.S.-Mexico Border Activities
 - Illegal traffic and Border Patrol



Photo: Kevin Young



Photo: Katy McClelland



Photo: USCBP

Threats

- Human-subsidized Predation
 - Reduced FTHL densities along developed edges
- Invasive Plants
 - Degraded habitat quality and increased fire risk
- Climate Change
 - Models: 2050 likely okay, 2100 unknown



Photo: Kevin Young



Photo: Mark Dimmitt

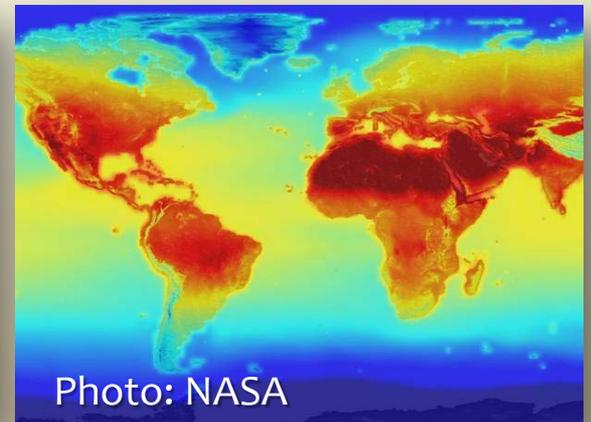
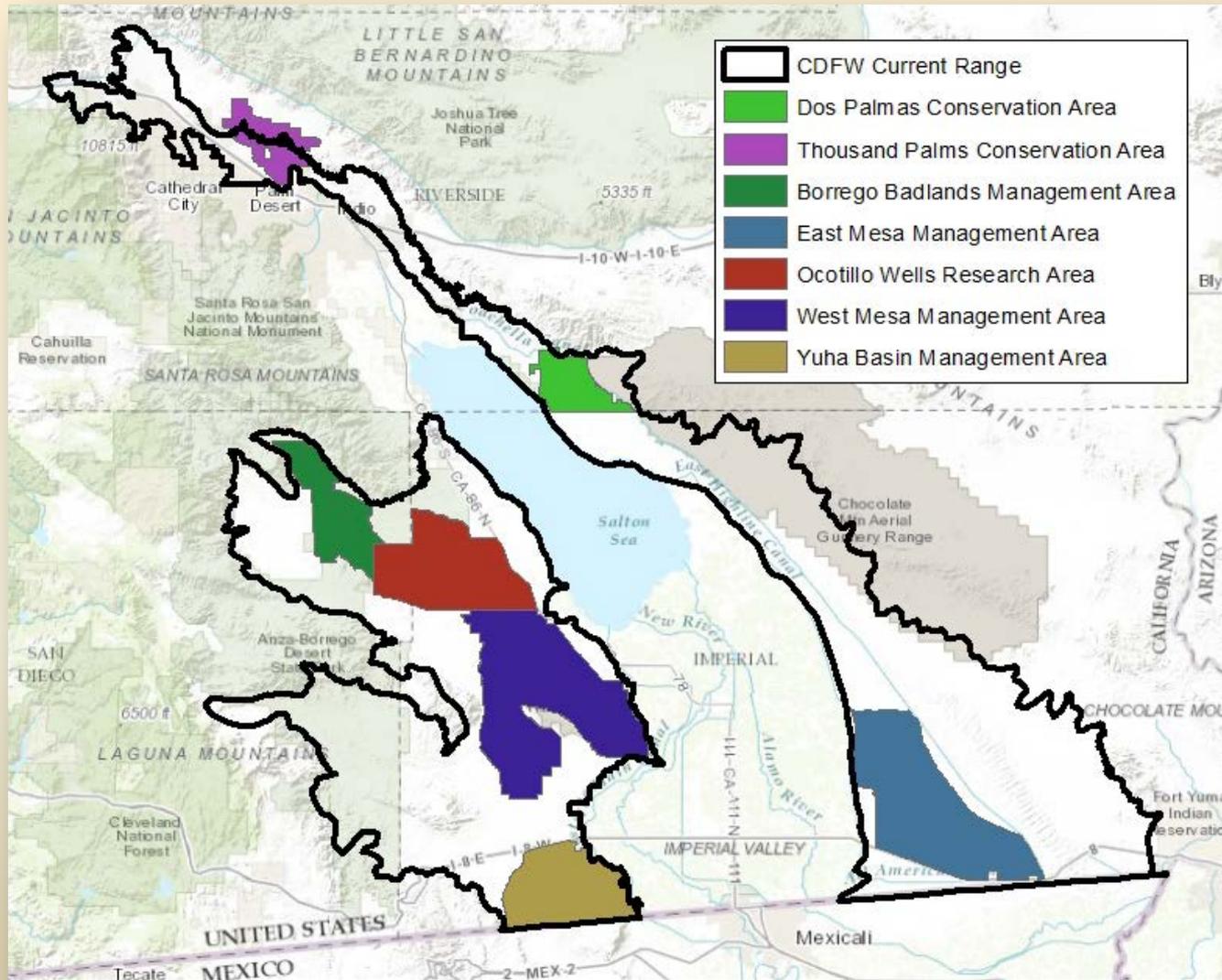


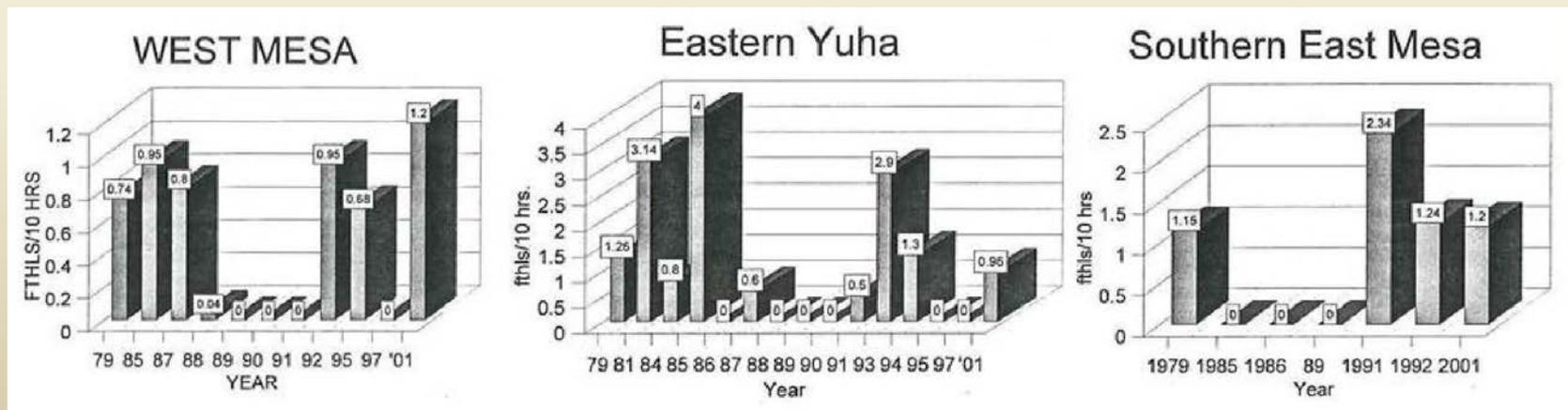
Photo: NASA

Data Source Locations



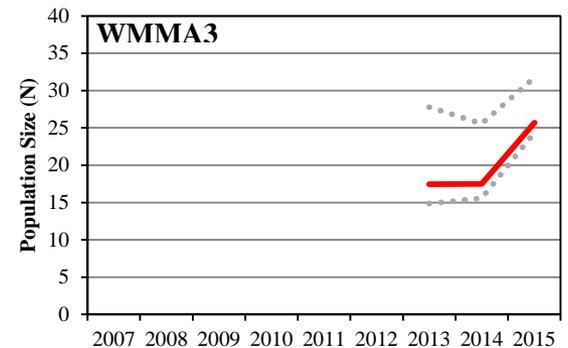
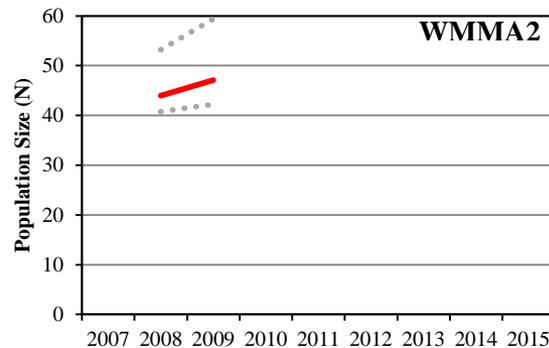
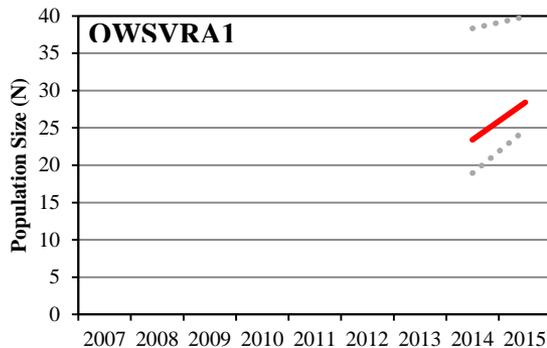
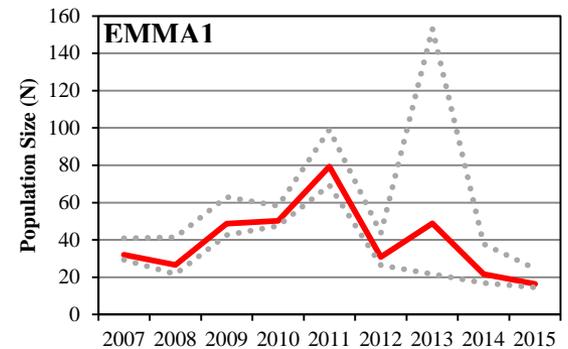
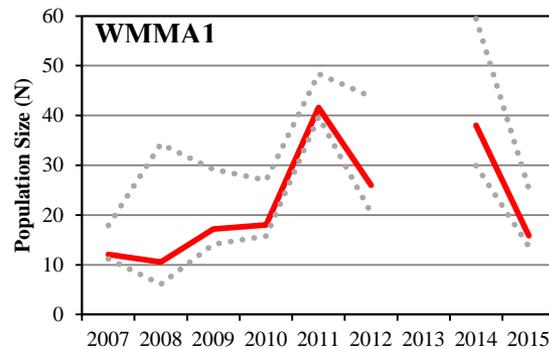
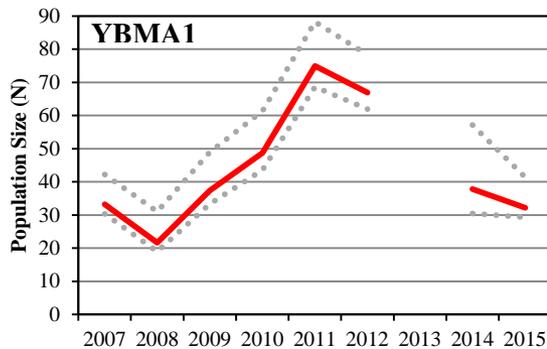
Population Trends

- Difficult to estimate, high uncertainty
 - Low detectability of FTHL
 - Inconsistent and unreliable survey methods
 - Large fluctuations over short periods
- 1979-2001: overall stable (Wright 2002)



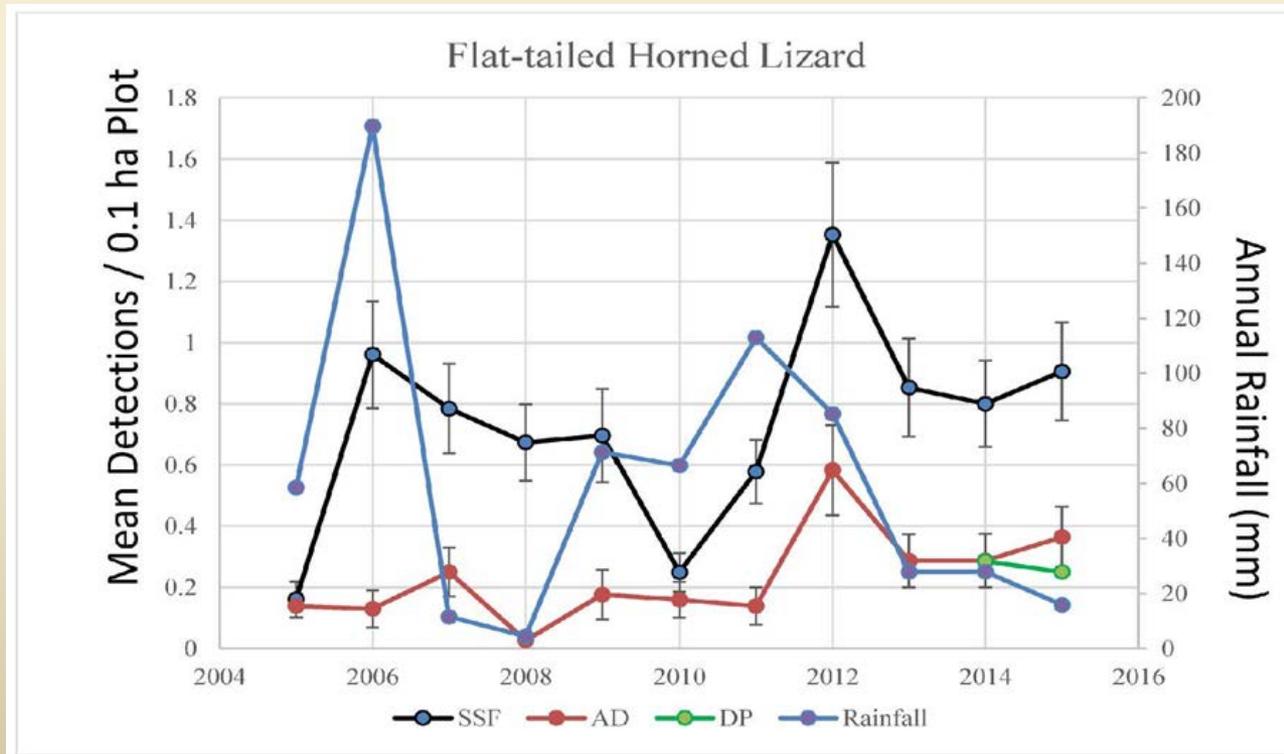
Population Trends

- Standardized mark-recapture on RMS Areas
- 2007-2015: overall stable (Grimsley and Leavitt 2016)
 - Similar patterns across RMS Areas



Population Trends

- 2005-2015: Coachella Valley (CVCC 2016)
 - Thousand Palms (black and red): overall stable
 - Dos Palmas (green): too few data



Existing Management

- Rangewide Management Strategy
 - Established MAs/RA
 - 1% cap on permanent disturbance
 - Mitigation and monitoring for project impacts
 - Purchase inholdings/land
 - Fund research
 - Population monitoring
 - Restorative measures
 - Coordination with Mexico



Photo: Gary Nafis

Existing Management

- Sikes Act
 - Integrated Natural Resource Management Plans
- CA Desert Conservation Act
 - Areas of Critical Environmental Concern (ACEC)
- Desert Renewable Energy Conservation Plan
 - Implements the RMS for FTHL conservation/mitigation
 - Estimated 2% modeled habitat loss in DRECP Area
 - Increases number and extent of ACECs in FTHL range
- Coachella Valley MSHCP
 - 75 year permit for urban and renewable energy
 - Establishes “core” conservation areas

Key Findings (Title 14 CCR 670.1)

- Present or Threatened Habitat Modification or Destruction
- Overexploitation
- Predation
- Competition
- Disease
- Other Natural Events or Human-related Activities

Recommendations

- Using best available scientific information, listing as is not warranted at this time.
- Commission not add Flat-tailed Horned Lizard to the list of Threatened and Endangered species under the California Endangered Species Act.
- Several management recommendations in Status Review report.

Thank You / Questions



Photo: Jack Goldfarb



VIA ELECTRONIC MAIL

November 22, 2016

California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, CA 95814
fgc@fgc.ca.gov

Re: Comments on Flat-Tailed Horned Lizard Status Review and Consideration of the Listing Under the California Endangered Species Act at the December 8, 2016 Meeting Item # 25

Dear Commissioners,

The Center for Biological Diversity submits these comments on the California Department of Fish and Wildlife's September 2016 status review of the flat-tailed horned lizard (*Phrynosoma mcallii*) ("Status Review") and in support of the Commission's consideration of listing the species under the California Endangered Species Act ("CESA"). The Center petitioned the Commission in June 2014 to list the flat-tailed horned lizard as endangered throughout its range in California, pursuant to the California Endangered Species Act. Under the Act, the Commission may also consider listing the petitioned species as threatened if it finds that the standard is met.¹

While the Center appreciates the effort that went into the Department's review and supports many of the management recommendations, the Center respectfully disagrees with the Department's listing recommendation because it downplays the significance of ongoing habitat degradation and loss and relies heavily on unfounded expectations about future voluntary management actions under the Rangewide Management Strategy ("RMS") that are uncertain to occur. The Center instead urges the Commission to reject the Department's recommendations and find that listing is warranted, and take the needed steps to protect the flat-tailed horned lizard as an endangered species or a threatened species under the California Endangered Species Act.

¹ "Threatened species" means a native species or subspecies of a bird, mammal, fish, amphibian, reptile, or plant that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts required by this chapter." (Cal. Fish & G. Code, § 2067.)

1) The Department’s listing recommendation is flawed because it consistently weighs uncertainty against the species.

The key rationales underlying the Department’s recommendation do not comport with the CESA’s guiding principles, and are not supported by the best available science. Instead, the Department’s Status Review, time and again, when confronted with uncertainty regarding the ongoing degradation of flat-tailed horned lizard habitat, status of the population, and extent of the threats, chooses to rely on the assumption that requires the lizard to bear the burden of risk.

For example, as explained below, the Status Review states that the impacts of habitat disturbance from off road vehicle use on the flat-tailed horned lizard is unknown despite significant evidence showing that habitat disturbance is linked to abundance of the lizard and its prey. Similarly, the Status Review assumes that limiting renewable energy development on federal lands within the management areas will significantly benefit the species despite significant evidence that development on private lands within and outside of the management areas may continue unabated and development of adjacent federal lands may significantly fragment remaining habitat outside of the management areas. Had either of these assumptions gone the other way, as they should, the Department’s conclusions would likewise have gone the other way.

Under CESA, it is not proper for the Department or the Commission to weigh uncertainty *against* the species. To do so means risking the decline or loss of a species simply because the Department believes it there could be more conclusive evidence in the future. CESA does not allow this. Instead, CESA seeks to protect species before it is too late. Like the Federal ESA, CESA “contains no requirement that the evidence be conclusive in order for a species to be listed.” *Defenders of Wildlife v. Babbitt*, 958 F.Supp. 670, 679-81 (D.D.C. 1997). This is why wildlife agencies are “not obligated to have data on all aspects of a species’ biology prior to reaching a determination on listing.” *Id.* A species should be listed “even though many aspects of the species’ status [are] not completely understood, because a significant delay in listing a species due to large, long-term biological or ecological research efforts could compromise the survival of the [species].” *Id.* It is imperative, therefore, that this Commission not simply defer to the Department’s recommendation.

Had the Department properly weighed uncertainty in favor of the flat-tailed horned lizard’s survival it would likely recommend that listing is warranted at minimum as a threatened species because without the protections of CESA it is likely to become endangered within the foreseeable future. (Cal. Fish & G. Code, § 2067.) A one court put it in addressing the analogous federal statute, the “purpose of creating a separate designation for species which are ‘threatened’, in addition to species which are ‘endangered’, was to try to ‘regulate these animals before the danger becomes imminent while long-range action is begun.’” *Defenders*, 958 F.Supp. at 680 (citing federal ESA legislative history).

Even given the uncertainties the Department points out in the existing data, on balance the best available scientific information shows that the flat-tailed horned lizard is, at minimum,

likely to become endangered in the foreseeable future—and therefore warrants listing as a threatened species.

2) The Department’s Status Review does not accurately address ongoing habitat degradation and development pressures in the Management Areas and adjacent habitat

The Department’s Status Review overstates the level of conservation within the management areas.

As peer-reviewer Cameron Barrows explained, habitat that is not fully protected from future development and ongoing degradation does not provide true protection:

Despite the range-wide management plan in place there appears to be an on-going erosion, albeit slowed, of flat-tail habitat. Mitigating habitat losses with additional private lands acquired and put into public ownership is still habitat loss. Unless those lands are placed into fully protected designations, those mitigation lands are still “available” for future energy development. If flat-tail MAs are not fully protected, and managed toward sustainable flat-tail populations (Sahara mustard control, limits on OHV free play, no energy development, etc) then they are akin to what are often referred to as “paper parks” in third world countries – protection designations with no teeth.(Status Review, Peer Review #1, at pdf 306.)

a. Off road vehicle impacts are not adequately assessed.

Peer-reviewer Jim Rorabaugh noted that impacts from off-road vehicles and border patrol appear to be understated in the draft status review. (Status Review, Peer Review #3, at pdf 477, 491, 492, 502, 508.) Although Mr. Rorabaugh supports the RMS, he explained that the actual disturbance on the ground in management areas is far above the RMS goal of 1%. He estimates that “surface disturbance from vehicles may exceed that by ten fold.” (*Id.* at pdf 477.) Indeed, studies cited in the Department’s Status Review confirm that disturbance from vehicle tracks is far higher than the 1% goal in the RMS. “Wright (2002) estimated 11.4% of the West Mesa MA had vehicle tracks in 2001, and the USFWS (2003) estimated that surface area disturbance in 2002 was 9.7% in the Yuha Basin MA and 7.8% in the East Mesa MA.” (Status Review at 48.) While the Status Review also notes that estimates can vary due to some tracks being erased by wind events, the fact remains that ongoing and repeated disturbance is far higher than 1% in the management areas despite voluntary commitments to limit degradation.

Mr. Rorabaugh noted that BLM regulations do not allow off-road vehicles to travel off designated routes (except in the open areas). (Status Review, Peer Review #3, at pdf 490, providing edit: “The BLM allows **vehicles on designated routes trail-only riding** within the East Mesa, West Mesa, and Yuha Basin MAs.”) The Status Review rejected this edit and fails to clearly distinguish between lawful use of “designated” routes by off-road vehicles on BLM managed lands and unlawful use. Instead, the Status Review uses the term “established” routes. (Status Review at 48: “The BLM allows vehicles on established routes within the East Mesa, West Mesa, and Yuha Basin MAs.”) However, anytime off road vehicles repeatedly pass across

the land, they may “establish” what appears to be a route; that use does not make it a “designated” route nor make the activity lawful. This misapprehension undermines much of the discussion of impacts from off road activity in the Status Review.

Mr. Rorabaugh further explains that the higher disturbance found in the studies that are available shows a lack of conformance with the management strategy and BLM commitments to enforce limits on off road vehicle use in the management areas:

These numbers are significant given that according to the RMS new (since 1997) surface disturbance is supposed to remain below 1% (see 2.2.1, page 26 of the RMS). One could argue, based on the language in 2.2, that that cap only applies to permitted land use authorizations. So illegal offroad use by recreationists or Border Patrol doesn't count. But if that is the case, it undermines the purposes of the RMS. Action 7.1 (page 30) has the participants providing law enforcement necessary to ensure compliance with OHV regs. There is not supposed to be offroad vehicle use in MAs, so a roughly 10% surface coverage by vehicle tracks represents either 1) a failure of law enforcement to control recreational use, or 2) a failure to convince Border Patrol to not drive off-road. It is probably both. (Status Review, Peer Review #3, at pdf 491.)

Mr. Rorabaugh further expressed concern that the draft status review states that extent of impacts of off-road vehicle use on flat-tailed horned lizards remains “unknown” given the clear evidence of impacts and harm to habitat.

Given the range of adverse effects OHVs have on desert ecosystems, it is hard to make the case that OHVs are not bad for FTHLs, and it is almost certainly an incremental adverse effect. The more vehicles traveling off road (and the more vehicles traveling on dirt roads or trails) the greater the impact. But off-road is particularly detrimental to soils, plants, and cryptobiotic crusts. The level of OHV use in CA MAs was quantified in the early 2000s (Wright 2002, USFWS 2003) and vehicle tracks covered roughly 10% of the surface area (that is a lot, especially given that tracks are scrubbed away by the wind in many areas). So OHV is another stressor on FTHL. (*Id.* at pdf 492.)

The Department's Status Review does note that off-road vehicle use can cause habitat degradation but appears to ignore this comment. The final version of the Status Review continues to state that the extent of impacts from off-road vehicle activity is “unknown,” implying that the lack of specific data on off-road vehicle use. (Status Review at 51.)

Off road vehicles have caused significant additional habitat degradation within the management areas since the RMS was adopted. The Status Review acknowledges this but suggests that this degradation is not well documented, however studies show otherwise and the peer-reviewers on-the-ground experience confirms the expanding disturbance.

It is clear that unauthorized, illegal off road vehicle use within the management areas has caused significant degradation through route proliferation. Simply utilizing widely available imaging via Google Earth shows that this problem has not abated under the RMS in the management areas. Attachment 2 provides a series of time-lapse screen shots, examples within 3 of the management areas where route proliferation and off route riding is damaging habitat. Even accounting for the better resolution of later images and the limitations of image duplication in Attachment 2, the images of disturbance in the management areas are startling.

Further, the newer imagery shows: large numbers of loop de loops and linear disturbance created well away from routes; as well as multiple redundant tire tracks paralleling routes widening them significantly while destroying habitat and connectivity. And this pattern is found across the management areas, not just in these spots. The Center urges the Commissioners to see for themselves the disturbance on the ground in these areas by accessing the Google Earth web based satellite imagery across the flat-tailed lizard's range. (Attachment 3 provides a "kmz" file that will display the borders of the management areas if accessed in Google Earth).²

b. Risks of significant habitat disturbance from energy development are understated.

The Status Review also understates the risks from increased renewable energy development *within* the management areas. (Status Review at 42-47.) Figure 15 (Status Review at 46) shows that under the recently adopted management plan for federal lands, the Desert Renewable Energy Conservation Plan ("DRECP"), a significant amount of federal lands managed by the BLM *within* the flat-tailed horned lizard management areas, nearly 200,000 acres, is designated as development focus areas for renewable energy development; even with a 1% disturbance cap in place that could lead to development of approximately 2,000 acres in the management areas in addition to the existing disturbance. (See Status Review at 47, Table 4.) Table 4 lists geothermal as the only type of renewable energy that will be allowed in development focus areas ("DFAs") *within* the management areas on public lands, and notes that all of the geothermal development within the management areas would be subject to non-surface occupancy ("NSO") leases.

While the DRECP limits the renewable energy development *within* the management areas to geothermal development which has a generally smaller footprint than solar facilities, multiple smaller developments on private lands interspersed with and adjacent to the BLM lands also raise concerns regarding fragmentation across the habitat of the flat-tailed horned lizard, as a result, these DFAs *within* the management areas *even with NSO leases* encourage development on neighboring private lands within the management areas and remain a concern.

Further, the Status Review fails to explain that DFAs on public lands adjacent to these management areas—within flat-tailed horned lizard habitat-- are open variously to geothermal, solar, and all renewable energy technologies as shown on the map attached (attachment 1). (DRECP, Appendix D, Figure D-39.³) The DRECP allows significant amount so geothermal

²Historical imagery on Google Earth can be accessed by selecting the "clock with the green arrow" icon, which allows the historical imagery to be selected by date.

³ Available at <http://drepc.org/finaldrepc/>

energy leases to be developed with surface occupancy in flat-tailed horned lizard habitat as well as solar and wind projects. For example, the already tenuous connection between flat-tailed horned lizard populations in East Mesa and Dos Palmas could be eliminated by just a few projects in that area. The potential for extensive renewable energy development scattered across both the federal public lands adjacent to the management areas and on private lands both within and outside of the management areas could significantly impact the remaining flat-tailed horned lizard habitat and is not accurately addressed by the Status Report. Taken together, the potential for renewable energy development in flat-tailed horned lizard habitat remains a significant threat.

Furthermore, there are virtually no limits on renewable energy development on private land within flat-tailed horned lizard habitat. As the Status Review admits “renewable energy facilities are being approved on county lands that are not requiring implementation of the RMS conservation measures.” (Status Review at 43-45) The Status Review’s attempt to downplay this issue by reference to CEQA compliance is not well taken. (*Id.* at 45; “although renewable energy companies are expected to evaluate potential impacts to Flat-tailed Horned Lizards and mitigate to a less than significant level through CEQA compliance”.) This is an unfounded assertion, given that CEQA is not, nor was it ever intended to be, a habitat protection mechanism, and that lead agencies are allowed under CEQA to approve a project despite environmental impacts if they find that social or economic factors outweigh the environmental costs. The need for all projects to comply with CEQA is not a substitute for providing needed, substantive protections under the California Endangered Species Act for threatened and endangered species—if this were so, there would be no need for CESA at all.⁴

The uncertainty regarding the amount or extent of renewable energy development within the range of the lizard both within and adjacent to the management area also shows that the Status Report’s reliance on voluntary actions to protect the flat-tailed horned lizard habitat is misplaced. Overall, the continued degradation of habitat within the management areas and the potential for additional degradation and development in those areas and adjacent habitat contradicts the Status Review’s conclusions that listing is not needed to protect the lizard. The Center urges the Commission to reject the Department’s recommendation and instead find that listing the flat-tailed horned lizard is warranted to ensure its survival and recovery into the future.

3) Other threat factors are not abated

The Status Review concedes that other ongoing threats to flat-tailed lizards in California include: invasive species, fire, drought, climate change, habitat loss (see above) and predation.

As the Status Review concedes, invasive plant species, primarily Saharan mustard and *Schismus*, have changed the ecological processes in the flat-tailed horned lizard habitat to the detriment of the species (at 56). As Mr. Rorabaugh states:

⁴ Nor does NEPA in any way prohibit federal agencies from choosing project alternatives that will negatively affect individual lizards, populations of flat-tailed horned lizards, or potential flat-tailed horned lizard habitat.

Schismus and some other non-native plants can be so dense as to make it difficult for a wide-bodied lizard like a horned lizard to move through it. This will slow it down and potentially make it more susceptible to predation. (Status Review at pdf 498)

The increased biomass that these non-native annual plants create the recently documented increase in fire to which most desert species including the flat-tailed horned lizard are not adapted. While the Status Review now mentions the 3,600 acre fire in the East Mesa Management Area, the high mortality of creosote and other perennial shrubs in the area, and the slow re-establishment of shrubs to the habitat, it concludes that “The degree to which invasive plants are having widespread population-level impacts, either alone or in conjunction with other factors, throughout the species’ range in California is unknown” (Status Review at 68.) Mr. Rorabaugh expressed concern that the draft status review downplayed impacts of invasive plant species on flat-tailed horned lizards given the clear evidence of impacts and harm to habitat.

Invasive annual plants are something that has dramatically increased in the FTHL’s range since I started working with the species in 1978. *Schismus* has been common and widespread for a long time, but Sahara Mustard (*Brassica tournefortii*), in particular, is on the increase. It is now notably dominant in spring blooms in southwestern Arizona and the Gran Desierto de Altar of northwestern Sonora. Fire is a serious potential consequence of abundant, dense stands of these invasive plants. Further discussion of the 3,600 acre fire that occurred in the East Mesa MA in 1992 should be included in your assessment, including any analyses of how FTHL populations responded (if known). Creosote bush scrub is not adapted to fire. The agencies participating in the Conservation Agreement can put fires out, but controlling the invasive plants that fuel those fires is a much more difficult task. (Status Review at pdf 535)

The status review does not evaluate the increase of ignition sources in flat-tailed horned lizard habitat, including the role that off-road vehicles and other activities play in introducing fire into a habitat altered by greater biomass within the interstitial spaces between and around the bases of desert shrubs.

The Status Review notes the different effects of drought on the flat-tailed horned lizard and its habitat. However, as Mr. Rorabaugh states in his peer-review:

As my comments in the document suggest, and monitoring since 2011 supports, the FTHL is sensitive to periods of drought. Yes it lives in one of the hottest and most arid portions of North America, but if that aridity and heat increase, the species has nowhere to go. (Status Review at pdf 534-535)

The Status Review recognizes that predation is the largest natural cause of mortality of flat-tailed horned lizards. (Status Review at 54.) It then evaluates that anthropogenic increases in predation only affect the small, isolated populations adjacent to developed areas (Status Review at 67.) However, the ongoing development in the management areas including transmission lines are

dismissed despite the fragmentation of habitat and increased creation of predator perching opportunities. Incredibly, the Status Review then concludes, based primarily lack of quantitative data, that effects of these activities are unknown and then recommends that listing is not warranted at this time. (Status Review at 68.)

4) The Department’s conclusion that protection is not needed relies heavily on voluntary conservation efforts by federal agencies that are not certain to occur.

The Status Review relies heavily on the assumption that ongoing voluntary measures by the cooperating agencies will sufficiently protect the flat-tailed horned lizard within the management areas such that the protections of listing under the California Endangered Species Act are not needed. Thus, the Department concludes “Adequate environmental review, coupled with continued implementation of the RMS and CVMSHCP, should reduce the likelihood that the aforementioned threats will significantly adversely impact Flat-tailed Horned Lizards in the foreseeable future.” (Status Review at 4.) The Commission should not adopt the Department’s recommendations because the assumption that implementation of the RMS has been effective and will continue at the same level as in the past is unfounded.

As detailed in the petition, the Status Review, and discussed above, the data shows that reliance on voluntary measures has not been effective in the past to protect flat-tailed horned lizard habitat. Indeed the best available data shows continued and increased degradation of habitat even in the management areas that were created under the RMS to fend off the need to list the species. In the past this may have been due more to lack of sufficient staff and funding for enforcement, rather than lack of commitment by the federal agencies, but nonetheless the continued degradation of habitat has been significant.

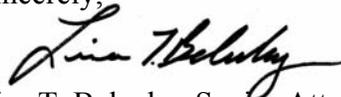
Most importantly, the recent change in federal administrations makes reliance on voluntary efforts by the federal agencies to protect the flat-tailed horned lizard in the management areas *in the future* highly imprudent. The incoming administration is openly hostile to environmental concerns and resource protection. Even if the new administration does not formally withdraw support from the Regional Management Strategy or revise the recent management plans to limit protections (both of which are possible), the incoming Congress is sure to further reduce staff and funding for conservation efforts by the BLM and other federal agencies. Given this uncertainty, the Commission should not rely on the voluntary management strategy or federal agency actions to protect the flat-tailed horned lizard. The Commission should, rather, provide needed protection to the under California’s Endangered Species Act to ensure that this rare and iconic species continues to survive and thrive in our California deserts.

CONCLUSION

Thank you for considering these comments regarding the need to protect the flat-tailed horned lizard and the shortcomings of the Department’s Status Review of this imperiled species. The Center urges the Commission to reject the Department’s recommendation that listing is not warranted at this time because it is based on assumptions that are not supportable regarding future voluntary conservation management by federal agencies and fails to weigh uncertainties in

the data in favor of conservation of the lizard. The Center instead urges the Commission to find the petitioned action to list the flat-tailed horned lizard as endangered is warranted, or at minimum find that listing the species as threatened is warranted because it is likely to become endangered in the foreseeable future, and take the needed steps to protect the flat-tailed horned lizard as an endangered or threatened species under the California Endangered Species Act.

Sincerely,



Lisa T. Belenky, Senior Attorney
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
(510) 844-7107
Fax: (510) 844-7150
lbelenky@biologicaldiversity.org

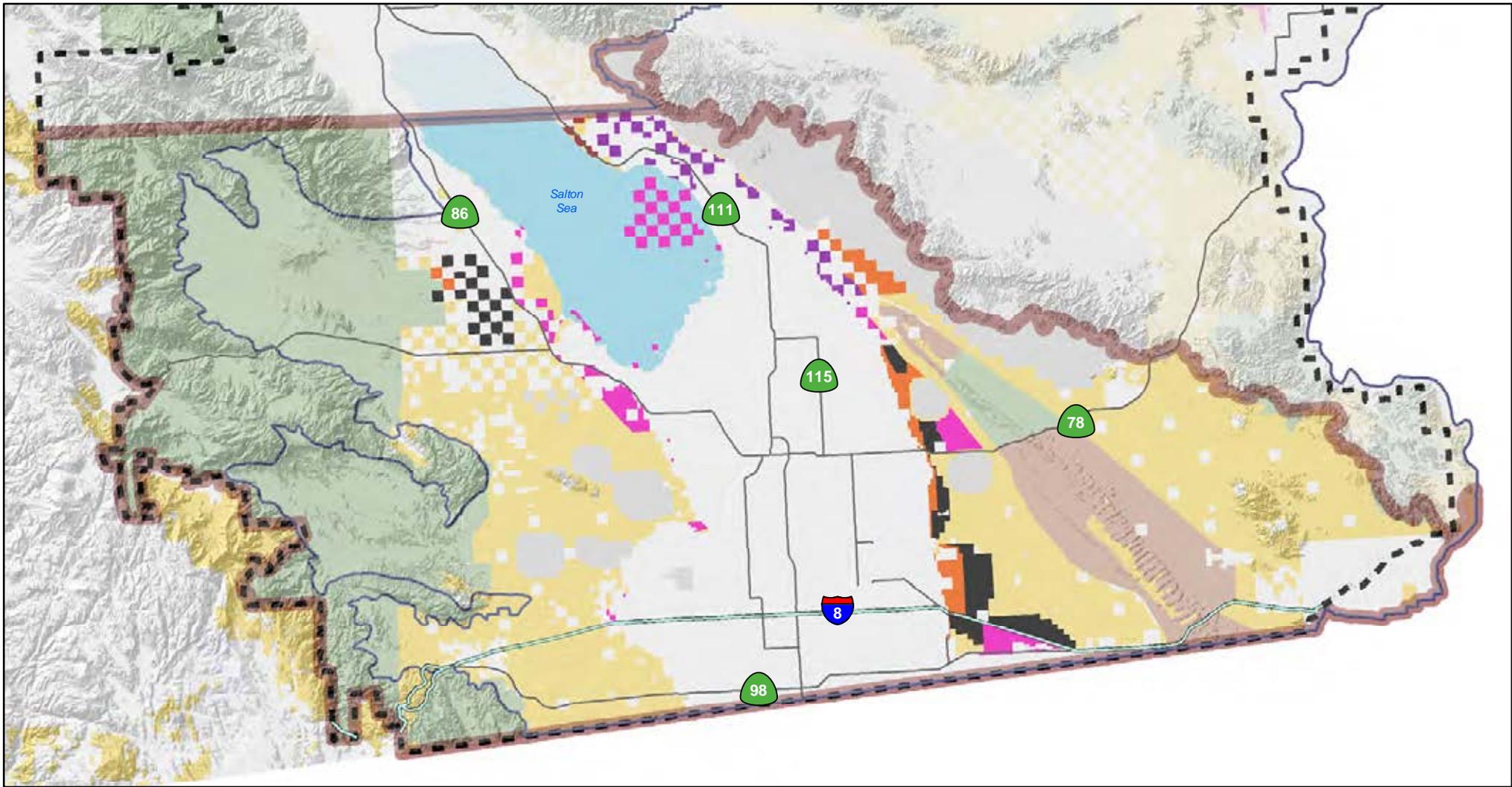


Heene Anderson
Senior Scientist/Desert Program Director
Center for Biological Diversity
8033 Sunset Blvd., #447
Los Angeles, CA 90046
(323) 654-5943
ianderson@biologicaldiversity.org

Attachments:

- Attachment 1: BLM, Desert Renewable Energy Conservation Plan, Appendix D, Conservation and Management Action Implementation Support Information and Maps, Figure D-39.
- Attachment 2: Increased Disturbance in Management Areas Shown from Satellite Imagery, prepared by Center for Biological Diversity, November 2016.
- Attachment 3: kmz file with outlines of Management Areas.

Attachment 1

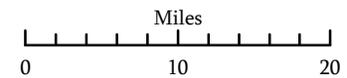
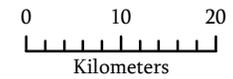


- | | |
|----------------------------------|-----------------------------------|
| DRECP Ecoregion | DRECP Boundary |
| Renewable Footprint | CDCA Boundary |
| All Technologies | LLPA |
| Geothermal, No Surface Occupancy | Imperial Sand Dunes Open OHV Area |
| Geothermal Only | Land Status |
| Solar and Geothermal Only | Bureau of Land Management |
| Variance Process Lands | Department of Defense |

Figure D-39
Lake Cahuilla
Ecoregion DFA Technologies

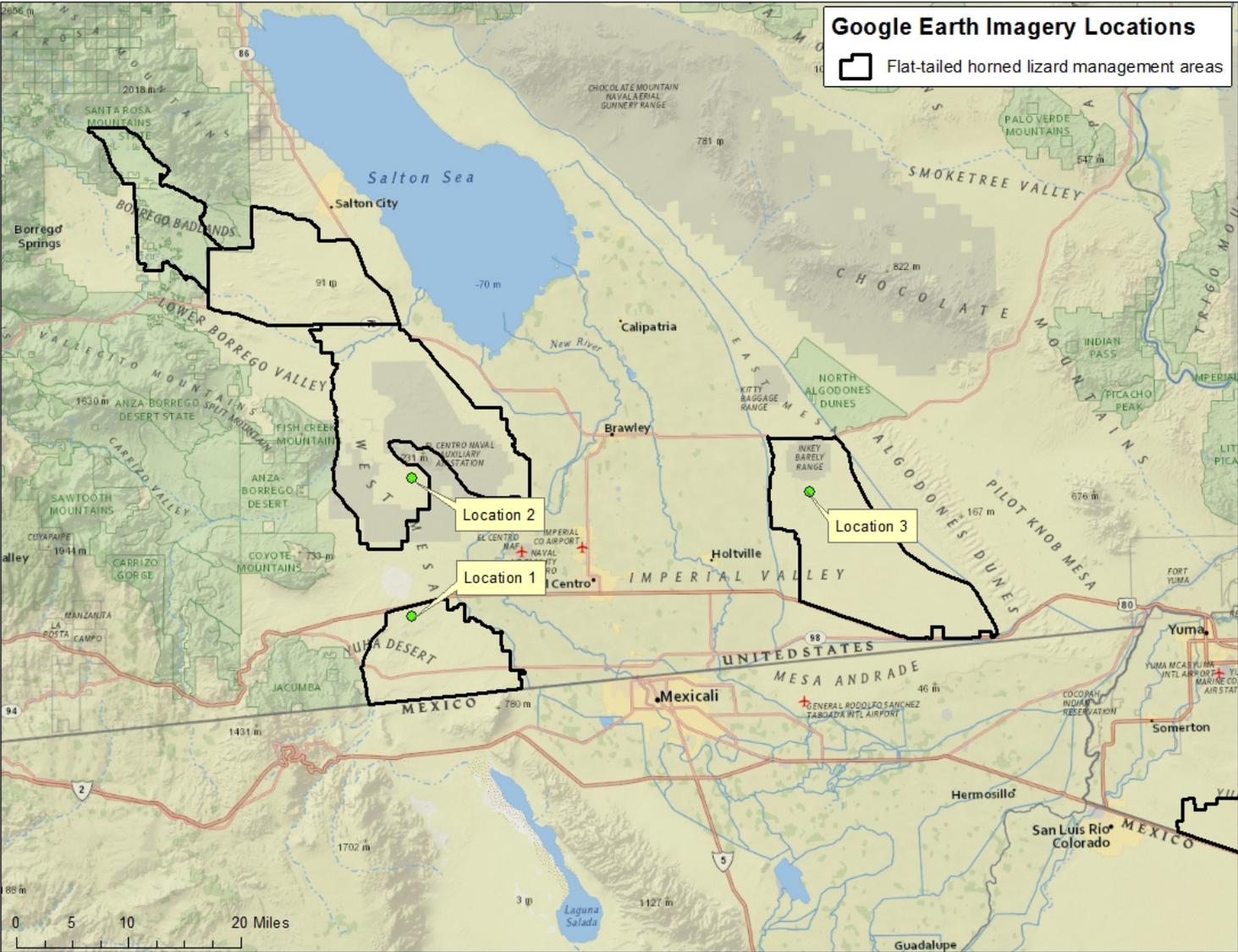
8/10/2016

BLM California State Office



Attachment 2

INCREASED DISTURBANCE IN MANAGEMENT AREAS SHOWN FROM SATELLITE IMAGERY





Sign in

Timeline slider showing a range from 1996 to 2016, with a specific date of 2/28/2008 selected.

Location 1: 2008



Image U.S. Geological Survey

Google Earth

1996

Imagery Date: 1/31/2008 32°44'53.09" N 115°50'32.17" W elev. 0 ft eye alt. 792 ft



Sign in





6/15/1996
1996 2016

Location 2: 1996



Image U.S. Geological Survey

Google Earth

1996

lat 32.934198° lon -115.847777° elev 0 ft eye alt 3612 ft



Sign in

Timeline interface showing a date slider from 1996 to 2016, with a specific date of 3/20/2015 highlighted.

Location 2: 2015





12/30/2005
1996 2015

Location 3: 2005



Image U.S. Geological Survey

Google Earth

3/20/2015
1996 2015

Location 3-2015





Attachment 3: kmz file with outlines of Management Areas.
Screen print provided to the Fish and Game Commission showing the FTHL management area outlines that are provided in the kmz file sent to the Commission for use with Google Earth.



DEPARTMENT OF THE NAVY
COMMANDER NAVY REGION SOUTHWEST
937 N. HARBOR DR.
SAN DIEGO, CA 92132-0058

IN REPLY REFER TO:

5090
Ser N40/181
February 5, 2016

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Dear Commission Members:

SUBJECT: REQUEST TO REFRAIN FROM LISTING THE FLAT-TAILED HORNED LIZARD AS ENDANGERED

On behalf of the military services in Arizona and California, we request that the California Fish and Game Commission refrain from listing the Flat Tailed Horned Lizard (FTHL). The upcoming decision regarding the California Endangered Species Act status of the FTHL has the potential to disrupt ongoing conservation measures for this species. While it is understood by all parties that, as a Federal entity, state listings have no direct regulatory effect on our operations, state listing could negatively impact the Rangewide Management Strategy (RMS), which has been successful to date. This may result in unintended negative long-term consequences for the conservation of the species via a disruption in current successful management procedures and also have a negative effect on the military training mission in southeastern California and southwestern Arizona.

The FTHL RMS was implemented in 1997 (updated 2003) in an effort to conserve the lizard and its habitat at levels that would ensure survival of the species into perpetuity. Through the RMS, 13 state and federal signatory agencies, including the United States (US) Navy and United States Marine Corps, are committed to habitat conservation measures, species monitoring, and any additional measures necessary to ensure the plan is effective. As provided in the RMS, approximately 485,000 acres of land in Arizona and California are currently managed as FTHL Management Areas (MAs); signatory agencies have agreed to limit disturbances and manage habitat for the benefit of the lizard. In California, Naval Air Facility El Centro manages approximately 38,300 acres of bombing range as MAs under the provisions of the RMS; there are also an additional 114,800 acres of military training range area in Arizona, administered by Marine Corps Air Station, Yuma, which are managed as MAs as well.

Annual monitoring data is collected under the provisions of the RMS, and show that robust populations of the species occur. This monitoring also shows natural annual fluctuations, indicating that the management measures and protections currently in place through the RMS are effective and are protecting the lizard over the long term, while providing long-term data on which to base management decisions for this species. Since 1997, the RMS has provided management for this species at numbers far above those which would warrant designation as a threatened or endangered species under any biological criteria. Real, on-the-ground management of this species continues to be effective and negates any need for an endangered species listing. The US military is participating in this important conservation plan in order to protect the vital

5090
Ser N40/181
February 5, 2016

mission of training warfighters in the desert environment, while upholding all applicable environmental laws and regulations.

It is our understanding that a decision by the Commission to list the lizard as an endangered species in California would render the RMS ineffective by placing the "recovery" of the species in the hands of the state of California to create a conservation and recovery plan. Numbers of FTHLs observed and estimated through annual monitoring under the RMS are well above that which would indicate endangerment in the foreseeable future. A California state listing would effectively deny the lizard the currently recognized RMS protections which are in place across most of its remaining habitat in the US, potentially leading to eventual federal listing review and impacting military activities across the range of the species in two states.

Two previous letters have been sent from FTHL RMS signatory agencies (June 8, 2015 from the US Bureau of Land Management, and September 6, 2015 from the US Bureau of Reclamation) to the California Department of Fish and Game Commission to advise the need for careful consideration of this issue.

In short, a listing decision by the Commission would render current proven protections for the lizard ineffective, and could inadvertently result in fewer protections than those currently in place over its range.

Sincerely,



C. L. STATHOS
Deputy Regional Environmental Coordinator
By direction
of the Commander

SEP 16 2015

YAO-7210
ENV-4.00

California Department of Fish and Wildlife
Nongame Wildlife Program
Attn: Ms. Laura Patterson
1812 9th Street
Sacramento, CA 95811

Subject: Status Review of the Flat-tailed Horned Lizard (*Phrynosoma mcallii*) Comment Response

Dear Ms. Patterson,

We have received the Public Notice dated August 14, 2015. On behalf of the Bureau of Reclamation, Yuma Area Office, I would like to provide some input regarding the petitioned action related to the flat-tailed horned lizard (*Phrynosoma mcallii* or FTHL) as Endangered under California's Endangered Species Act (CESA). Basically, we are against the petitioned action.

As you are probably already aware, Reclamation is a signer of the Range-wide Management Strategy (RMS) for FTHLs. Reclamation has participated in this effort since conception and is well rehearsed in the management aspects of the RMS. We actively participate in the Management Oversight Group and Interagency Coordinating Committee. We are satisfied with the conservation measures currently in place to protect FTHL and its habitat both in Arizona and in California. Reclamation would prefer that the RMS be the primary source of protection for the FTHL. We believe in the voluntary model of compliance versus the compulsory model. We believe under the compulsory model that more resources will be used.

We also would like to advocate on behalf of one of our largest customers, the Imperial Irrigation District. Under the proposed listing, significant changes to current agreements, plans, and other efforts would need to take place, placing an undue burden on their staff and resources to come into compliance with California's law. We firmly believe that this additional burden will provide no real benefit to the conservation of the lizard, but may have the opposite effect of using resources to comply with the law rather than using those resources to directly benefit conservation.

We have been partners with the Arizona Game and Fish Department (Department) to collect monitoring data. We defer to the Department to provide the data and reports so that we are not duplicating the effort or adding confusion.

If you have any questions regarding our perspective or if you still need the monitoring data that Reclamation has participated in collecting at the Yuma Desert Management Area in Arizona, please contact Mr. Nicholas (Nick) Heatwole by electronic mail at nheatwole@usbr.gov or by telephone at 928-343-8111. Thank you for the opportunity to provide our input.

Sincerely,

Julian DeSantiago, Manager
Environmental Planning and Compliance Group

cc: LC-8000 (JSwett)

7001

7200

✓7210

WBR:NHeatwole:ptsosie:09/14/2015:928-343-8111

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United States Department of the Interior



BUREAU OF LAND MANAGEMENT

El Centro Field Office
1661 S. 4th Street
El Centro, CA 92243
www.ca.blm.gov/elcentro

June 8, 2015

In Reply Refer To:

6840 (P)
CA-670.10

Michael Flores
Senior Environmental Scientist
California Department of Fish and Wildlife
Inland Desert Region
3602 Inland Empire Blvd., Ste C-220
Ontario, California 91764

Dear Mr. Flores:

Thank you for your letter of May 26, 2015 regarding the current status of the Flat-tailed horned lizard (FTHL) with respect to Fish and Game Code Section 2074.2 and outlining the process for seeking permission to take FTHL that your Department provides to prospective incidental take permit applicants. We will be happy to share this information with potential incidental take permit applicants as we continue to manage public lands in Imperial County during the pendency of the Fish and Game Commission's decision making process for the FTHL.

I am also writing to affirm the Bureau of Land Management's long-standing and continued commitment to manage public lands in accordance with the 1997 FTHL Conservation Agreement. As you know, the Conservation Agreement was initiated to conserve the FTHL by reducing threats to the species, stabilizing the species' populations, and maintaining its ecosystem. For nearly two decades, signatories to the Conservation Agreement have worked together closely to:

1. Further develop and implement the objectives, strategies, and tasks of the Flat-tailed Horned Lizard Rangeland Management Strategy
2. Provide program personnel with facilities, equipment, logistical support, and access to lands under their control.
3. Participate regularly in ICC and MOG meetings to enhance communication and cooperation, and to help develop annual or other work plans and reports.
4. Develop and distribute public information and educational materials on this conservation effort.
5. Provide ongoing review of, and feedback on, this conservation effort.
6. Cooperate in development of major media releases and media projects.
7. Keep local governments, communities, the conservation community, citizens, and other interested and affected parties informed on the status of this conservation effort, and solicit their input on issues and actions of concern or interest to them.

8. Develop voluntary opportunities and incentives for local communities and private landowners to participate in this conservation effort.
9. Assist in generating the funds necessary to implement this conservation effort.

In addition, the management areas identified in the Rangewide Management Strategy for FTHL were incorporated into the BLM's land use planning many years ago and are currently managed in accordance with that designation.

We appreciate your Department's continued active participation as a signatory to the Conservation Agreement and thank you for your many contributions to and support for these important conservation efforts for FTHL. Please contact me by telephone at (760) 337-4410 or by e-mail at tzale@blm.gov if we can be of further assistance to your Department.

Sincerely,

Thomas F. Zale
Field Manager



United States Department of the Interior
BUREAU OF LAND MANAGEMENT

El Centro Field Office
1661 S. 4th Street
El Centro, CA 92243
www.blm.gov/ca/elcentro

April 15, 2016



In Reply Refer To:

6840(P)
CA670.25

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Re: Petition to List the Flat-Tailed Horned Lizard Under the California Endangered Species Act

Commissioners:

The Flat-tailed Horned (FTHL) Lizard Management Oversight Group (MOG) is providing the following information to the California Fish and Wildlife Commission (Commission) in advance of your decision whether the FTHL warrants listing under the California Endangered Species Act (CESA).

In 1997, multiple state and federal agencies, recognizing the need to conserve and ensure the persistence of the FTHL, voluntarily formed a collaborative partnership. The agencies include: the Bureau of Land Management's (BLM) El Centro, Palm Springs, and Yuma Field Offices, the Bureau of Reclamation's Yuma Area Office, the Department of Defense's (DoD) Marine Corps Air Station Yuma and the El Centro Naval Air Facility, the U.S. Fish and Wildlife Service Ecological Services' Phoenix and Carlsbad Field Offices, the Arizona Game and Fish Department, the California Department of Parks and Recreation (Ocotillo Wells State Recreational Vehicle Area and the Anza Borrego Desert State Park), and the California Department of Fish and Wildlife. In 1997, the agencies developed and signed a Conservation Agreement (CA) with the objective to develop and implement a Rangewide Management Strategy (RMS) to conserve the FTHL. The CA also required the formation of the Management Oversight Group (MOG), which is comprised of management level agency representatives to provide oversight of the RMS implementation, and the Interagency Coordinating Committee (ICC), a multi-agency group of biologists to monitor implementation and exchange information on the conservation of the FTHL. The RMS was developed and published in 1997 and implementation began the same year. The partnership has been continually implementing a wide range of FTHL conservation measures under the RMS since 1997. The success of the CA and RMS has been instrumental in each of four decisions by the U.S. Fish and Wildlife Service to withdraw proposals to list the FTHL as a threatened species under the Endangered Species Act.

We understand that, as a member agency of the FTHL ICC and the FTHL MOG, CDFW is already in possession of information that has been gathered and compiled by these committees, and considered this information while preparing the agency's recommendation. This would

include an impressive record of successful implementation of the FTHL RMS and monitoring data collected through 2014 that show that FTHL populations within Management Areas (MA) fluctuate naturally and are not declining. With this letter, we wish to provide a few updates and additional information for your review and consideration.

As mentioned above, and as has been thoroughly documented by the ICC in their annual reports, signatory agencies of the FTHL CA have been very successful in implementing provisions of the FTHL RMS. During a recent review of RMS implementation, the ICC determined that 11 provisions have been completed, 52 are being implemented and are considered to be perpetually ongoing, three are being implemented and are non-perpetual, and one has not been initiated (a research project that is awaiting funding). The most significant accomplishment that resulted from the RMS was the creation of five MAs totaling 485,200 acres. The MAs are managed to minimize surface disturbance. Authorized disturbance within each MA is held to a maximum disturbance cap of one percent (1%).

As part of the RMS, a Research Area (RA) was established at Ocotillo Wells State Vehicular Recreation Area (SVRA) totaling ~ 85,000 acres. Ocotillo Wells SVRA has been a member of the ICC since its inception and has participated in annual surveys, studies, research and overall FTHL management since that time. Preliminary demography study results suggest a stable population within the RA and individual numbers of lizards that are consistent with findings across the MAs. Occupancy study results indicate low extinction rates and one of the highest occupancy rates among the MAs.

According to the annual report for 2014, only 963 acres (0.21%) have been authorized for disturbance within MAs since the signing of the agreement 19 years ago. This does not reflect the relinquishment in December 2015 of the undisturbed, 102 acre right-of-way grant for the Ocotillo Sol solar project. Therefore, authorized disturbance within MAs is actually only 861 acres (.18%).

Other important accomplishments that resulted from the RMS were incorporation of provisions of the RMS into agency planning documents, termination of competitive OHV events in California MAs, termination of pesticide applications in California MAs, requirement of compensation and mitigation for projects that impacted habitat, interagency coordination of activities, development and implementation of an effective monitoring protocol, evaluation of various mitigation techniques, coordination with Mexico including a rangewide survey effort and the initiation of a Rangewide Management Strategy, public information and education efforts, and the completion of numerous research projects that provided useful management information.

Interested parties have raised concerns that the CA and RMS are voluntary agreements without the force of law to make conservation measures mandatory. The force of law is not required to conserve a species. Worldwide, many voluntary partnerships have formed to successfully conserve a species and/or habitat. With respect to FTHL, signatory agencies have, for many years, voluntarily pooled finite resources and directed them at implementing the RMS to conserve the species and its habitat. More than that, however, signatory agencies have also voluntarily codified the conservation strategies into their land use management plans, making the continued implementation of the RMS mandatory.

This is true for the three BLM offices that have participated as MOG and ICC members, as they have integrated the RMS into their respective Land Use Plans. For the BLM in California, this occurred in 2005 when the California Desert Conservation Area Plan was amended to include the adoption of the RMS. In Arizona, the BLM adopted the revised FTHL RMS and called for its implementation in the Yuma RMP (2010).

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In summary, the MOG maintains that a significant portion of existing FTHL habitat is protected, that the CA and RMS are being effectively applied, that measures outlined within the RMS are sufficient to maintain self-sustaining populations within MAs, and monitoring data show that FTHL populations are viable and not declining within MAs. Signatory agencies have always maintained that, because of the successful implementation of the CA and RMS, the listing of this species under either federal or State law is not warranted.

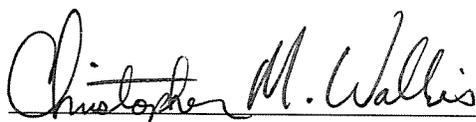
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Sincerely,

Thomas F. Zale
BLM El Centro Field Manager

John Kalish
BLM Palm Springs Field Manager

John MacDonald
BLM Yuma Field Manager



Christopher M. Wallis
USBR Chief, Resource Management Office

- Allen, M.F., C. Barrows, K.D. Fleming, and D. Hutchinson. 2006. Population, community, and ecosystem consequences of an invasive plant in a desert sand dune landscape. Interim report to Coachella Valley Association of Governments. 21 pp.
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United States Department of the Interior
BUREAU OF LAND MANAGEMENT

El Centro Field Office
1661 S. 4th Street
El Centro, CA 92243
www.blm.gov/ca/elcentro



June 29, 2016

In Reply Refer To:

6840(P)
CA670.25

California Fish and Game Commission
P.O. Box 944209
Sacramento, CA 94244-2090

Re: Petition to list the flat-tailed horned lizard under the California Endangered Species Act

Commissioners:

The Flat-tailed Horned Lizard (FTHL) Management Oversight Group (MOG) is providing the following information to the California Fish and Wildlife Commission (Commission) in advance of your decision whether the FTHL warrants listing under the California Endangered Species Act (CESA).

In 1997, multiple state and federal agencies, recognizing the need to conserve and ensure the persistence of the FTHL, voluntarily formed a collaborative partnership. The agencies include: the Bureau of Land Management's (BLM) El Centro, Palm Springs and Yuma Field Offices, the Bureau of Reclamation's Yuma Area Office, the Department of Defense's (DoD) Marine Corps Air Station Yuma and the El Centro Naval Air Facility, the U.S. Fish and Wildlife Service Ecological Services' Phoenix and Carlsbad Field Offices, the Arizona Game and Fish Department, the California Department of Parks and Recreation (Ocotillo Wells State Recreational Vehicle Area and the Anza Borrego Desert State Park), and the California Department of Fish and Wildlife. In 1997, the agencies developed and signed a Conservation Agreement (CA) with the objective to develop and implement a Rangewide Management Strategy (RMS) to conserve the FTHL. The CA also required the formation of the Management Oversight Group (MOG), which is comprised of management level agency representatives to provide oversight of the RMS implementation, and the Interagency Coordinating Committee (ICC), a multi-agency group of biologists to monitor implementation and exchange information on the conservation of the FTHL. The RMS was developed and published in 1997 and implementation began the same year. The partnership has been continually implementing a wide range of FTHL conservation measures under the RMS since 1997. The success of the CA and RMS has been instrumental in each of four decisions by the U.S. Fish and Wildlife Service to withdraw proposals to list the FTHL as a threatened species under the Endangered Species Act.

We understand that, as a member agency of the FTHL ICC and the FTHL MOG, CDFW is already in possession of information that has been gathered and compiled by these committees, and considered this information while preparing the agency's recommendation. This would

include an impressive record of successful implementation of the FTHL RMS and monitoring data collected through 2014 that show that FTHL populations within Management Areas (MA) fluctuate naturally and are not declining. With this letter, we wish to provide a few updates and additional information for your review and consideration.

As mentioned above, and as has been thoroughly documented by the ICC in their annual reports, signatory agencies of the FTHL CA have been very successful in implementing provisions of the FTHL RMS. During a recent review of RMS implementation, the ICC determined that 11 provisions have been completed, 52 are being implemented and are considered to be perpetually ongoing, three are being implemented and are non-perpetual, and one has not been initiated (a research project that is awaiting funding). The most significant accomplishment that resulted from the RMS was the creation of five MAs totaling 485,200 acres. The MAs are managed to minimize surface disturbance. Authorized disturbance within each MA is held to a maximum disturbance cap of one percent (1%).

As part of the RMS, a Research Area (RA) was established at Ocotillo Wells State Vehicular Recreation Area (SVRA) totaling ~85,000 acres. Ocotillo Wells SVRA has been a member of the ICC since its inception and has participated in annual surveys, studies, research and overall FTHL management since that time. Preliminary demography study results suggest a stable population within the RA and individual numbers of lizards that are consistent with findings across the MAs. Occupancy study results indicate low extinction rates and one of the highest occupancy rates among the MAs.

According to the annual report for 2014, only 963 acres (0.21%) have been authorized for disturbance within MAs since the signing of the agreement 19 years ago. This does not reflect the relinquishment in December 2015 of the undisturbed, 102 acre right-of-way grant for the Ocotillo Sol solar project. Therefore, authorized disturbance within MAs is actually only 861 acres (.18%).

Other important accomplishments that resulted from the RMS were incorporation of provisions of the RMS into agency planning documents, termination of competitive OHV events in California MAs, termination of pesticide applications in California MAs, requirement of compensation and mitigation for projects that impacted habitat, interagency coordination of activities, development and implementation of an effective monitoring protocol, evaluation of various mitigation techniques, coordination with Mexico including a rangewide survey effort and the initiation of a Rangewide Management Strategy, public information and education efforts, and the completion of numerous research projects that provided useful management information.

Interested parties have raised concerns that the CA and RMS are voluntary agreements without the force of law to make conservation measures mandatory. The force of law is not required to conserve a species. Worldwide, many voluntary partnerships have formed to successfully conserve a species and/or habitat. With respect to FTHL, signatory agencies have, for many years, voluntarily pooled finite resources and directed them at implementing the RMS to conserve the species and its habitat. More than that, however, signatory agencies have also voluntarily codified the conservation strategies into their land use management plans, making the continued implementation of the RMS mandatory.

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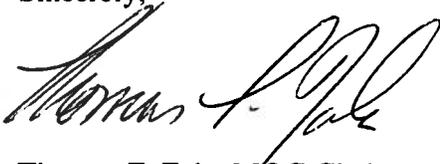
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Thomas F. Zale, MOG Chairman
BLM Acting California Desert District Manager



Carrie L. Simmons
Field Manager (Acting)
Bureau of Land Management, El Centro Field Office



Name Douglas J. Herrema

Title Acting Field Manager, Palm Springs - South Coast Field office

Representing Agency U.S. DOI, Bureau of Land Management

John H. Donald

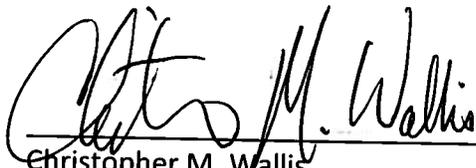
Name

Title

FM

Representing Agency

BLM YUMA

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Christopher M. Wallis

Chief, Resource Management Office

Bureau of Reclamation

Yuma Area Office

Randy J. English

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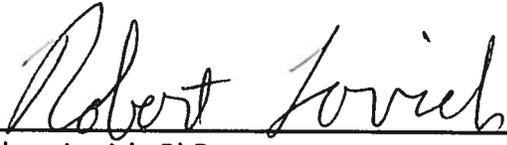
Conservation Manager

Marine Corps Air Station Yuma

Michel D. Remington

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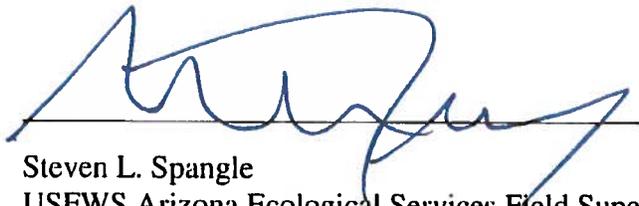
Naval Air Facility El Centro Installation Environmental Program Director

A handwritten signature in cursive script that reads "Robert Lovich". The signature is written in black ink and is positioned above a solid horizontal line.

Robert Lovich, PhD.

Senior Natural Resources Specialist

Naval Facilities Engineering Command Southwest



Steven L. Spangle
USFWS Arizona Ecological Services Field Supervisor



G. Mendel Stewart

USFWS Carlsbad Fish and Wildlife Office Field Supervisor

A handwritten signature in black ink, appearing to read "Samuel P. Barber", written over a solid horizontal line.

Samuel P. Barber

Region IV Supervisor

Arizona Game and Fish Department

A handwritten signature in blue ink, appearing to read "Garratt Aitchison", is written over a solid horizontal line.

Garratt Aitchison
District Superintendent
California State Parks – Ocotillo Wells District

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