appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety.

In consideration of the foregoing, the agency proposes to amend part 594, *Schedule of Fees Authorized by 49 U.S.C. 30141*, in Title 49 of the Code of Federal Regulations as follows:

PART 594—[AMENDED]

1. The authority citation for part 594 would be amended to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

2. Section 594.5 would be amended by redesignating paragraphs (g) and (h) as paragraphs (h) and (i), respectively, and by adding a new paragraph (g), to read as follows:

§ 594.5 Establishment and payment of fees.

* * * * *

(g) A fee for the review and processing of a conformity certificate shall be submitted with each certificate of conformity furnished to the Administrator.

* * * * *

3. A new section 594.10 would be added to part 594, to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

(a) Each registered importer shall pay a fee based on the agency's direct and indirect costs for the review and processing of each certificate of conformity furnished to the Administrator pursuant to § 591.7(e) of this chapter.

(b) The direct costs attributable to the review and processing of a certificate of conformity include the estimated cost of contract and professional staff time, computer usage, and record assembly, marking, shipment and storage costs.

(c) The indirect costs attributable to the review and processing of a certificate of conformity include a pro rata allocation of the average benefits of persons employed in reviewing and processing the certificates, and a pro rata allocation of the costs attributable to the rental and maintenance of office space and equipment, the use of office supplies, and other overhead items.

(d) For certificates of conformity submitted on and after October 1, 1997, the fee is $17.00.

Issued on: July 10, 1997.

Kenneth N. Weinstein,

Associate Administrator for Safety Assurance.

[FR Doc. 97–18529 Filed 7–14–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC10

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule To List the Flat-Tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). The Service is taking this action because some of the threats are less serious than at the time the proposed rule was published, a conservation agreement will ensure further reductions in threats, and data indicating a population decline are inconclusive. The Service will continue to monitor the status of this species and work with involved interests for conservation of the species.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Carlsbad Ecological Services Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California, 92008.

FOR FURTHER INFORMATION CONTACT: Sandy Vissman, at the above address or by telephone at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard (*Phrynosoma mcallii*) is a small, cryptically colored, phrynosomatid lizard that reaches a maximum adult body length (excluding the tail) of approximately 81 millimeters (3.2 inches). The lizard has a flattened body, short tail, and dagger-like head spines like other horned lizards. It is distinguished from other horned lizards in its range by a dark vertebral stripe, two slender elongated occipital spines, and the absence of external ear openings. The dorsal surface of the flat-tailed horned lizard is pale gray to light rusty brown. The ventral surface is white and unmarked, with the exception of a prominent umbilical scar.

The lizard was first collected by Colonel G.A. M'Call, between Camp Yuma and Vallecito in the 1850s. Through the mid-1900s, most locality information came from California, where it became apparent that the flat-tailed horned lizard occupied the lower elevations of the Salton Trough in Riverside, Imperial, and San Diego Counties. Because of distinctive morphological characteristics, Hallowell (1852) first described the species as *Anota M'callii*, placing the flat-tailed horned lizard in a monotypic genus. The flat-tailed horned lizard remained a subject of taxonomic controversy for many years, occupying subsequently the genus *Doliosaurus* (Girard 1858), *Phrynosoma* (Cope 1866), and *Anota* (Cope 1900). Taxonomic questions were finally resolved by Norris and Lowe (1951), who determined that the similarities of this species to other horned lizards were more significant than its differences and placed the

species again in *Phrynosoma*. No subsequent change in the taxonomic status has been proposed for *P. mcallii*, other than clarification by Funk (1981) of the spelling of the specific epithet. The flat-tailed horned lizard is one of the more distinctive of the 13 species currently recognized in the genus.

The flat-tailed horned lizard is endemic to the Sonoran Desert in the Coachella Valley in Riverside County, California; the Imperial and Borrego valleys in and near Anza Borrego and Ocotillo Wells in Imperial and eastern San Diego counties, California; south of the Gila River and west of the Gila and Tinajas Altas mountains in Yuma County, Arizona; east of the Sierra de Juarez in the Laguna Salada and Yreka Basins in northeastern Baja California Norte, Mexico; and north and west of Bahia de San Jorge to the delta of the Rio Colorado in northwestern Sonora, Mexico (Turner and Medica, 1982). The species occurs at elevations up to 800 meters (2600 feet) above sea level, but most populations are below 300 meters (980 feet) elevation. Within this range, the flat-tailed horned lizard typically occupies sparsely vegetated, sandy desert flatlands with low species diversity, but it is also found in areas covered with small pebbles or desert pavement, mud hills, dunes, alkali flats, and low, rocky mountains. According to Hodges (1997), approximately 51.2 percent of the historic range of the flat-tailed horned lizard habitat within the United States is extant. An estimated maximum of 503,500 hectares (ha) (1,244,000 acres (ac)) of habitat remains in the United States, with approximately 56,800 ha (140,300 ac) found in Arizona and 446,670 ha (1,103,800 ac) found in California.

Johnson and Spicer (1985) estimated that approximately 29 percent of the species' range occurs in Mexico; however, the distribution of the species in Mexico is poorly understood because of the lack of distribution inventories for the species. The acreage of suitable habitat found within the estimated range in Mexico is unknown. The species' distribution in Baja California Norte is limited by extensive agriculture that extends from Mexicali to the Colorado River and by the wetland and riparian communities of the Colorado River Delta, the Rio Hardy, and Laguna Salada. In Sonora, records indicate flat-tailed horned lizards exist primarily from an extensive sandy plain east of the Colorado River to the dunes of the Gran Desierto and also near Puerto Penasco. Between these areas is a relatively undisturbed region dominated by the large dune system of the Gran Desierto and volcanic or montane terrain in the Sierra Pinacate region, an area where few locality records exist and potential flat-tailed horned lizard habitat appears scattered (Gonzales-Romero and Alvarez-Cardenas 1989).

Vegetation throughout the range of the flat-tailed horned lizard is predominantly Sonoran Desertscrub (Turner and Brown 1982). Flat-tailed horned lizards are found in habitat types including desert pavement, pebbled areas, mudhills, and dune edges. Characteristics of ''high quality'' flat-tailed horned lizard habitat include sparse vegetation, little slope, and surface soils of fine, packed sand or desert pavement overlaid intermittently with loose, fine sand (Turner *et al.* 1980). In Ocotillo Wells, however, recent work has found higher abundances of lizards in mudhills than in sandy areas (Wone 1997). The relationship between vegetation density and lizard abundance is unclear because of differences between study results. Wone (1996) found a negative correlation between lizard abundance and vegetation density, while Turner and Medica (1982) found a positive correlation between lizard abundance and perennial density. Altman et al. (1980) stated that when aggregate perennial densities are less than 250 per ha, ''the habitat is not likely to be favorable for *P. mcallii*. Almost all areas examined with high abundance of *mcallii* had aggregate perennial densities of greater than 1000/ha.''

Because of difficulties in locating flat-tailed horned lizards, Turner et al. (1980) used scat counts to estimate the relative abundance of the species throughout its range. Broadly defined areas with high relative abundance of flat-tailed horned lizards have been found in California and Arizona using these methods and historical locality records. Turner and Medica (1982) identified four such areas in California, including southern East Mesa, southeastern Yuha Desert, the Superstition Mountain area in Imperial County, and the Benson Dry Lake area near Ocotillo Wells in San Diego County. Rorabaugh et al. (1987) identified one area of high relative abundance southeast of Yuma in Yuma County, Arizona. Although Muth and Fisher (1992) caution ''habitat quality should not be inferred from scat counts,'' historical locality records support the assessment of habitat quality in the aforementioned areas.

Rough estimates of flat-tailed horned lizard density have been made in different parts of the species' range. Estimated densities include 0.3–1.5 lizards/ha (Rorabaugh 1994), 0.6 lizards/ha (Hodges 1995), 4.8–8.4 lizards/ha (Turner and Medica 1982), and 1.3–1.39 lizard/ha (Muth and Fisher 1992). Rorabaugh (1994) recalculated the data presented by Turner and Medica (1982) using different analytical techniques, and arrived at a maximum density of 3.8/ha. Differences between studies in estimated density may represent differences in the lizard abundance in areas studied, differences in lizard abundance attributable to general declines in the species' abundance over the years between studies, or differences due to different methods of data collection and analysis. Approximately 503,500 ha (1,244,000 ac) of flat-tailed horned lizard habitat remain in the United States (derived from Hodges 1997), with approximately 176,800 ha (437,000 ac) of that habitat located within areas designated by Federal agencies as Flat-tailed Horned Lizard Management Areas (MAs) (Foreman 1997). Based on the density range (0.3–3.8 lizards/ha) and habitat acreage estimates presented above, the population of lizards protected within MAs could range from 53,056 to 672,045. These are rough estimates because habitat quality varies throughout MAs, some surface disturbance currently exists within the management areas, flat-tailed horned lizards are not evenly distributed across their range, and the large difference between the two density estimates is not accounted for in the literature. Even a population of a size at the low end of this range is large enough that it is not likely to be threatened by demographic and genetic factors.

A Flat-tailed Horned Lizard Population Viability Analysis (PVA) was conducted by a Conservation Team convened to share research involving this species and to evaluate a proposed management strategy. The final PVA provided no estimate of the minimum viable population size and did not determine whether populations contained within the proposed management areas were viable. The Conservation Team concluded that further information was necessary to extrapolate from a PVA, but identified variables that apparently have a large effect on population viability. When introduced into modeled populations, variations in mortality, fecundity, number of egg clutches produced by a female in a year, and environmental conditions strongly affect population viability.

In June, 1997, Federal and State agencies signed a Flat-tailed Horned Lizard Conservation Agreement (CA) and agreed to implement a Flat-tailed Horned Lizard Rangewide Management Strategy (Management Strategy). The

Management Strategy was developed by an interagency working group over a two-year period. As part of the CA, agencies delineated specified acreages under their jurisdiction as MAs. Approximately 176,800 ha (437,000 ac) of the remaining flat-tailed horned lizard habitat is found within MAs. This acreage represents approximately 35 percent of habitat remaining in the United States. Signatories of the CA, which include the Service, Bureau of Land Management (BLM), Bureau of Reclamation (BoR), U.S. Marine Corps, U.S. Navy, Arizona Game and Fish Department, and California Department of Parks and Recreation, committed to implementation of conservation measures for the species. These measures include: continuation of monitoring of lizard populations and new surface disturbance within MAs; limitation of surface-disturbing projects within MAs to one percent of the area of MAs over the course of the next five years; collection of compensation fees from project proponents conducting activities within MAs; reduction in off-highway vehicle (OHV) routes within MAs; prohibition of off-highway competitive events within MAs; support of continued flat-tailed horned lizard monitoring and research; mitigation for surface disturbing activities in lizard habitat; and attempting to acquire all private inholdings within MAs. Participation in the CA/Management Strategy is voluntary, and agencies may withdraw from participation with 60 days notice.

Prior to signing the agreement, agencies had already begun to implement planning actions identified as part of this agreement, including designation of MAs on BLM lands in California, application of mitigation measures on surface-disturbing projects on BLM lands in California, requiring compensation from project proponents conducting surface-disturbing activities in flat-tailed horned lizard habitat, designation of OHV routes on BLM lands in California (Foreman 1997), and acquisition of inholdings within the Yuma MA. Many of the measures identified in the CA are part of the agencies' ongoing management strategies and have been in place for years. Furthermore, the U.S. Marine Corps, at the Barry Goldwater Range in Arizona, has agreed to implement the terms and conditions of a conference opinion on ongoing activities, regardless of the species' status under the Act. Terms and conditions of the conference opinion include: limiting surface disturbance, enforcement of ''no trespass'' rules on the range, and initiation of a speed limit of 25 miles per hour on roads found within the range (U.S. Fish and Wildlife Service 1996). A Management Oversight Group, composed of managers from CA signatory agencies, was established to oversee implementation of the Management Strategy. This group first met on June 26, 1997.

Previous Federal Action

The Service included the flat-tailed horned lizard as a category 2 candidate for listing in its original Review of Vertebrate Wildlife, published in the **Federal Register** on December 30, 1982 (47 FR 58454). Category 2 candidates were those species for which data in the Service's possession indicated listing may be appropriate, but for which additional biological information was needed to support a proposed rule. This species was again included as a category 2 candidate in the Service's revised Vertebrate Notice of Review of September 18, 1985 (50 CFR 37958). Subsequently, the status of the flat-tailed horned lizard was elevated to category 1 on January 6, 1989 (54 FR 554), as new data on this species became available (Carlson and Mayhew 1988; Olech, undated; Rorabaugh et al. 1987). Category 1 candidates were those species for which the Service had on file sufficient information to support issuance of proposed listing rules. On November 29, 1993, the Service published a proposal (58 FR 62624) to list the flat-tailed horned lizard as a threatened species.

The Service held a public hearing on March 22, 1994, in Imperial, California, in response to formal requests from the public (59 FR 8450). The public comment period on the proposed rule was reopened from February 22, 1994, until April 22, 1994. At that time, the Service was unable to make a final listing determination on this species because of higher listing priorities.

On April 10, 1995, Congress enacted a moratorium on listing actions (Public Law 104–6) and eliminated funding for the Service to conduct final listing actions. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of 1996 (Pub. L. No. 104–134, 100 Stat. 1321, 1996). The Service published listing priority guidance for restarting the listing program on May 16, 1996 (61 FR 24722). When funding was restored, the Service commenced work on final actions, including the flat-tailed horned lizard proposed listing, in accordance with the listing priority guidance. The Service also coordinated with involved agencies on additional alternatives for conservation of the species.

The BLM opened a public comment period on the draft Management Strategy from January 21, 1997, to March 19, 1997 (62 FR 3052). The Management Strategy was the product of numerous meetings between agencies and individuals with an interest in the flat-tailed horned lizard. Public meetings regarding the draft Management Strategy were held in El Centro, California, on February 19, 1997, and in Yuma, Arizona, on February 20, 1997. Comments were addressed by the BLM, and, on June 9, 1997, Federal and State agencies signed a CA to implement the Management Strategy.

On March 5, 1997, the proposed rule comment period was reopened due to the time that had elapsed since the close of the initial comment period, changing procedural and biological circumstances, and the need to review the best scientific information available (62 FR 10016). The comment period was again extended for 30 days on May 6, 1997 (62 FR 24632).

On May 8, 1997, in response to a lawsuit filed by the Defenders of Wildlife, a U.S. District Court for the District of Arizona ruled that the Service must make a final determination on whether to list the flat-tailed horned lizard within 60 days of the filing date of the court order (May 16, 1997).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings during fiscal year 1997. The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the lists of threatened and endangered plants and animals. Processing of this proposed rule constitutes a Tier 2 action.

Public Comments on the Proposed Rule

In the November 29, 1993, proposed rule (58 FR 62624) and associated notifications, all interested parties were asked to submit factual reports or information that might contribute to development of a final rule. Appropriate State agencies and representatives, scientific organizations, and other interested parties were contacted and requested to comment. A public hearing was held on March 22, 1994, at Imperial Valley College at which 11 individuals

testified. To allow for adequate public comment, the Service had four comment periods: November 29, 1993, to January 28, 1994 (58 FR 62624); February 22 to April 22, 1994 (59 FR 8450); March 5 to May 9, 1997 (62 FR 10016); and May 9 to June 9, 1997 (62 FR 24632).

During the comment periods, the Service received a total of 59 comments (oral and written testimony) including 39 comments in support of Federal listing, 17 in opposition to Federal listing, and 2 neutral comments. Opposition to the listing proposal was expressed by two State agencies, two Federal agencies, five municipalities or municipal agencies, and eight other interested parties. Support for the listing was expressed by 1 Federal agency and 38 other interested parties.

The proposed rule to list this species pre-dated the Service's policy to seek independent peer review (59 FR 34270). However, during the open comment periods, the Service solicited the expert opinions of appropriate independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy and biological and ecological information for the flat-tailed horned lizard. The comments received were considered in making the Service's determination on the proposed rule.

Written comments and oral statements obtained during the public hearing are incorporated into this withdrawal notice where appropriate. The Service carefully considered all comments submitted relevant to the decision to finalize or withdraw the proposed listing. Comments submitted are available for review at the Service's Carlsbad Ecological Services Office (see **ADDRESSES** section). Because it now withdraws the proposal to list the flat-tailed horned lizard, the Service will respond to issues raised in comments that supported listing. Seven relevant issues were raised in these comments, and the Service's response to each is as follows:

Issue 1: Data on flat-tailed horned lizard population trends are unclear.

Service Response: Quantification of flat-tailed horned lizard abundance is difficult due to the sedentary nature, cryptic coloration, and patchy distribution of this species. Turner et al. (1980) developed a survey technique to estimate the relative abundance of flat-tailed horned lizards based on counts of the number of scats observed per observer per hour. The technique, modified by Olech (undated), assumes the number of flat-tailed horned lizards is directly proportional to the number of scats and uses both the number of scats and number of lizards observed to estimate the relative lizard abundance. Surveys were conducted in 1979, 1981, 1984–1991, and 1993–1996 using this technique. The survey results have been used to estimate large-scale population trends (Wright 1993). Recently, the validity of this methodology has been reexamined (Wone 1997; Muth, *in litt.* 1997; Wright 1993). The methodology does not account for variations in lizard activity, scat production due to fluctuating food resources, weather conditions that affect scat production or longevity in the field, observer capability, or small sample sizes (Rorabaugh 1994). Changes in scat abundance over time could be caused by changes in lizard activity or scat production rather than changes in population size. The Department of Defense (DoD) has recently funded work to assess the validity of using scat counts to determine relative abundance and to develop an improved survey technique. In the interim, a modified scat count method, still considered the best available technique, continues to be used to estimate population trends on BLM lands in California, and, in conjunction with habitat parameters and locality records, to determine presence or absence of the species.

The relationship between scat counts and lizard abundance is unclear. Scat counts may provide a rough index for assessing relative abundance (Rorabaugh 1994), but Wone (1997) found that scat counts were not correlated to relative abundance at Ocotillo Wells in California. However, Wright (1993) found that scat counts were correlated with numbers of lizards encountered during scat surveys. Muth and Fisher (1992) concluded that scat counts should be used only to determine relative abundance, but not to estimate population size or habitat quality. Some researchers feel that scat counts consistently overestimate the number of flat-tailed horned lizards because other lizard species can produce scat similar in size (Muth, *in litt.* 1997).

The information on population trends presented in the proposed rule was derived from scat count data collected between 1979 and 1991. Although the best information currently available on relative abundance and population trends of flat-tailed horned lizards is derived from scat counts, the confounding effects of scat persistence, heterogeneous scat distribution, variable rates of scat production, variations in survey methodology over time, and drought, including localized effects of low rainfall in different parts of the desert, make the population trend information derived from scat counts inconclusive. The population trends presented in the proposed rule showed that, between 1979 and 1991, two areas, West Mesa and East Mesa, did not experience a significant downward population trend and one area, the Yuha Desert, experienced an overall downward population trend. However, later analyses performed subsequent to publication of the proposed rule show that the Yuha Desert experienced an upward trend between 1991 and 1993 (Wright 1993) and no trend between 1993 and 1995 (Nicolai, unpublished data). The apparent downward population trend in the Yuha Desert noted in the proposed rule occurred in, and subsequent to, years characterized by drought. The observed downward trend may have been due to a temporary population decline or reduced scat production due to drought and reduction of food resources, rather than long-term habitat deterioration. In the short term, if flat-tailed horned lizards have less food resources available during drought years, a stable population may produce less scat as lizards become less active; this could cause erroneous population trend results (Rorabaugh 1994). Longer term declines in scat production during drought periods may be indicative of population reductions due to decreased reproduction or increased mortality.

Other information on population trends is largely anecdotal. Turner et al. (1980) reported few flat-tailed horned lizards and low scat counts on and near Highway 78 in East Mesa, California, an area where the species was one of the most abundant lizard species in the 1960s (Carlson and Mayhew 1988). Norris (1949) believed the species was fairly common in the Coachella Valley where flat-tailed horned lizards are now difficult to find (Turner *et al.* 1980). Neither these observations nor trend data derived from scat counts are sufficient to conclude that the species' population is significantly declining in areas of extant habitat.

Issue 2: Numerous comments supporting the proposal to list the flat-tailed horned lizard reiterate threats identified in the proposed rule, or identify new threats facing this species in portions of its range. Threats identified in comments include: current and projected habitat loss due to authorized and unauthorized off-highway vehicle activity; geothermal development; sand and gravel extraction; road construction; oil and gas leasing; powerline construction; canal or pipeline construction; Border Patrol off-road activity; lack of regulatory mechanisms (including unsuccessful BLM efforts to protect

species); residential, recreational, and industrial development; agriculture and resulting chemical pollution; land conversion on BLM inholdings authorized through the Imperial County General Plan; activities on lands adjacent to habitat; expansion of exotic plants into lizard habitat; increased fire frequency due to exotic plant expansion; and predation.

Service Response: The threats to the flat-tailed horned lizard are addressed in detail in the ''Summary of Factors Affecting the Species'' section of this notice. Based on analyses conducted prior to the proposal to list the flat-tailed horned lizard, as well as from more recent analyses, an estimated 30–51 percent of historical flat-tailed horned lizard habitat in the United States was modified or destroyed in the past century. However, the extent of current rangewide threats facing remaining flat-tailed horned lizard populations is less clear. Although individual populations are threatened by residential, recreational, industrial, and agricultural development, large tracts of suitable habitat remain relatively undisturbed in Mexico and on public lands in the United States. Habitat found on public lands is protected to varying degrees by existing land-use designation. Significant potential threats to this species on public lands have been reduced or eliminated since publication of the proposed rule to list the species as threatened.

Issue 3: Several commenters stated that the BLM in California has failed to implement planned actions in previous conservation plans and questioned the ability of the BLM in California to manage habitat for this species or to accomplish the goals established in the CA and Management Strategy.

Service Response: The BLM has renewed and strengthened its commitment to the conservation of the flat-tailed horned lizard through participation in the development of the Management Strategy and subsequent signing of the CA. The Service anticipates that the BLM will implement the Management Strategy; however, the decision to withdraw the proposal to list the flat-tailed horned lizard is not based solely on BLM participation in the CA and Management Strategy. The flat-tailed horned lizard occurs not only on the BLM lands in California, but also on lands owned by the DoD, BoR, U.S. Marine Corps, U.S. Navy, BLM in Arizona, and California Department of Parks and Recreation. All of these agencies are signatories to the CA. The Service will continue to monitor the implementation of proposed actions through participation in the Interagency Coordinating Committee (ICC), and the Management Oversight Group designated in the CA. The BLM has demonstrated its commitment to implementation of the CA by already taking actions identified in the Management Strategy. Planning actions that are being implemented by BLM in California include: designation of MAs; application of mitigation measures to surface disturbing activities; collection of compensation fees for unavoidable habitat alteration due to surface disturbing activities; seeking acquisition of private inholdings within MAs; limitation of habitat disturbance within MAs to one percent; coordinating with the Border Patrol; initiation of OHV route designation and signing; and prohibiting insecticide treatments within MAs as outlined in the BLM Record of Decision for the Curlytop Virus Control Program.

Issue 4: Proposed and anticipated development on public and private lands facilitated by the North American Free Trade Agreement (NAFTA) threatens flat-tailed horned lizard populations and potential habitat in the United States and Mexico.

Service Response: Development due to NAFTA is likely to impact some flat-tailed horned lizard populations and some habitat in the United States and Mexico. However, the area likely to experience such disturbance is not adequately documented and the significance of this threat to the species as a whole can not be determined based on the limited available information.

Issue 5: Off-highway vehicle activities pose continued threats to habitat throughout much of flat-tailed horned lizard range.

Service Response: While OHV activity poses a potential local threat to the flat-tailed horned lizard, there is no documentation that OHV use poses a significant threat throughout the range of the species. Off-highway vehicles are known to cause lizard mortality and habitat disturbance (Muth and Fisher 1992, Rado 1981). The level of OHV activity, however, varies from a high level within OHV open areas to a low level in areas where existing routes are located miles apart. The zone impacted by established routes and the resulting impact on local lizard populations have not been determined.

Although some studies found reduced scat abundance where vehicular tracks were abundant (Olech undated), studies that have attempted to assess impacts of OHV activity on flat-tailed horned lizards have been inconclusive. For example, Klinger et al. (1990) were not able to assess the effects of varying levels of OHV activity because the different levels of OHV activity which they examined occurred in different habitat types. In a small number of study plots (n=6) at the Imperial Sand Dunes (ISD) in southeastern California, Bury and Luckenbach (1983) found that areas impacted by OHV activity exhibited lower abundances of rodents, lizards, and plants than areas where there was no OHV activity. However, in plots of different levels of OHV activity, Wone et al. (1990) and Wright (1993) found no difference in the abundance of flat-tailed horned lizard scat. Some OHV activity causing habitat disturbance is unauthorized, but information concerning the amount and impact of unauthorized OHV activity is unavailable.

Although OHV activity results in lizard mortality and habitat disturbance, there is no evidence, based on current data, that this activity is a significant threat to the species or is resulting in rangewide declines of flat-tailed horned lizard populations.

Issue 6: Several commenters noted that there are research gaps involving the flat-tailed horned lizard that need to be better understood to develop conservation measures. Needs include researching lizard movements, ecology, recolonization potential, and nesting sites and studying the effects of OHVs on the species.

Service Response: The Service agrees that a better understanding of a variety of aspects of flat-tailed horned lizard ecology, such as movement, habitat use, recolonization potential, age-specific survivorship, reproductive ecology, demographics, population viability, and effects of OHVs on the species, is necessary to develop proper conservation measures, and to better assess the status of the species.

Issue 7: Several commenters who support listing the flat-tailed horned lizard as threatened question the ability of the CA and Management Strategy to sufficiently protect the flat-tailed horned lizard. Issues raised surrounding the CA include: enforceability of the CA, funding of the CA, the ability of the CA to remove threats, unprotected status of private inholdings found within the MAs and the Management Strategy's allowance of continued fragmentation.

Service Response: The Service anticipates that continued implementation of the CA and Management Strategy will provide continued protection for this species on substantial acreages contained within MAs. The signatory agencies have begun implementation of actions identified within the Management Strategy and

have agreed to monitor surface disturbance and population trends, given the best available methodology, and report each on an annual basis to the Management Oversight Group. Furthermore, agencies have agreed to seek acquisition of all private inholdings within the boundaries of MAs. To date, private inholdings within the boundaries of MAs total approximately 19,280 ha (48,200 ac) (Foreman 1996). The BLM has informed the Service that it has issued a Notice of Proposed Exchange and is developing a Draft Environmental Assessment for a land exchange process whereby BLM acreage located outside of priority areas will be exchanged for private inholdings within BLM MAs. Priorities for inholding acquisition via this exchange include private inholdings found within Wilderness Areas, critical habitat designated for federally listed species, and Areas of Critical Environmental Concern (ACECs). The Marine Corps is in the process of acquiring all state lands found within the boundaries of the MA which lie within the Barry M. Goldwater Range. Funding is currently being sought by the Management Oversight Group for further implementation of the strategy. The Management Strategy focuses on five MAs that are disjunct, and it is the objective of the Management Strategy to provide enough protected area within each MA to sustain a viable population within each MA.

It should be noted that, while the CA and Management Strategy are important tools in the conservation of the flat-tailed horned lizard, withdrawal of the proposal to list this species as threatened is not based solely on the CA and Management Strategy. Threats identified in the proposed rule have been reduced or eliminated since the publication of the proposed rule, and the information regarding population trends is inconclusive. The Management Strategy will, however, provide for conservation of the flat-tailed horned lizard on the extensive public lands on which it occurs and facilitate continued evaluation of the status of this species. The Service believes that the Management Strategy has and will continue to benefit flat-tailed horned lizard populations by significantly reducing the threats on public lands.

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list the flat-tailed horned lizard, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat loss has occurred throughout the range of the flat-tailed horned lizard. The proposed rule stated that approximately 34 percent of the historical habitat had been lost (23–27 percent in Arizona, and 40 percent in California). According to Hodges (1997), using different methodologies from those used in the proposed rule, approximately 48.6 percent of the historical range in the United States (31.1 percent in Arizona, and 50.2 percent in California) has been lost due to four primary activities; agriculture, filling the Salton Sea, urbanization, and military activities. Hodges (1997) analyzed the boundaries for the historical range, as well as the approximate total acreage of habitat remaining for this species. She estimates a maximum of 56,800 ha (140,300 ac) of habitat remain in Arizona, and, based on estimates of historical habitat and habitat loss, approximately 446,900 ha (1,103,800 ac) of habitat remain in California.

The proposal to list the flat-tailed horned lizard as threatened, and comments received during the public comment period, identified human activities that have modified or were anticipated to modify the habitat. Activities that have disturbed habitat within the range of the flat-tailed horned lizard include: geothermal development; residential, recreational, and industrial development; agricultural conversion and resulting chemical pollution; sand and gravel extraction, oil and gas leasing; canal, pipeline, and transmission line construction; and authorized and unauthorized OHV activity.

Loss of flat-tailed horned lizard habitat due to geothermal development historically has occurred on both private lands and BLM lands east of El Centro, California. Geothermal resources are known to occur in this area as part of the Known Geothermal Resource Area (KGRA). Historically, approximately 28,240 ha (69,760 ac) of potential flat-tailed horned lizard habitat were subject to geothermal development due to construction, maintenance and operation of geothermal powerplants within the KGRA. Because energy extraction technology within East Mesa has proven technologically unfeasible, and government subsidies have begun to expire, no new geothermal powerplants are proposed at this time (Larry Caffee, pers. comm. 1997). Consequently, future geothermal power plant construction and resulting habitat loss are not anticipated at this time.

In the early 1980s, acreage throughout California was leased to oil and gas companies. Approximately 7,800 ha (19,200 ac) were estimated to be subject to oil and gas exploration and development based on pending oil and gas leases in 1980 (Rado 1981). This information was utilized in the proposed rule to list the flat-tailed horned lizard. Since the publication of the proposed rule, all oil and gas leases within the range of the flat-tailed horned lizard have expired (BLM 1996), and are not anticipated for renewal because of low likelihood of resource abundance (Foreman, pers. comm. 1996). Thus, habitat loss due to oil and gas exploration and development no longer threatens the species.

Off-highway vehicle activities, including Border Patrol OHV activities and authorized and unauthorized recreational OHV activities, occur in many portions of the range of the flat-tailed horned lizard. The level of OHV activity, however, ranges from a high level in areas within OHV open areas to a low level in areas where existing routes are located miles apart. The zone impacted by established routes, and the resulting impact on local lizard populations is not known. The habitat disturbance caused by route proliferation in the desert is visually evident, but has not been adequately quantified at this time.

Off-highway vehicle activity can crush burrows necessary to flat-tailed horned lizards for temperature regulation (Wone 1997), can cause direct mortality (Muth and Fisher 1992), and modifies habitat through shrub loss, exotic plant introduction, and soil movement (Rado 1981). The overall impact of OHV activity on habitat and individual lizards likely depends on the frequency and intensity of use. In OHV Open Areas and the Ocotillo Wells State Vehicular Recreation Area (SVRA), which include an estimated 65,200 ha (161,000 ac) of potential flat-tailed horned lizard habitat, intensity of use is often high, and vehicular activity is not restricted to routes. However, the population trend data are inadequate to conclude that the flat-tailed horned lizard population in the Ocotillo Wells SVRA is declining. Flat-tailed horned lizard mortality on established trails has not been quantified, but is likely to occur because of the adaptations of this species for prey avoidance. This species relies on cryptic coloration for defense, and rarely flees when approached. Animals that do move, usually move short distances.

This behavior, combined with shallow depths of hibernation during the winter months make mortality due to vehicular activity likely. The BLM is conducting a route designation process that administratively closes some existing routes, and will be continuing to work with off-highway vehicular recreationists and wildlife biologists to identify routes unnecessary to the recreation community.

No studies to date have documented the distance from a road over which any population declines or impacts may occur. Although some studies have found reduced scat abundance in areas with vehicular tracks (Olech undated), overall, studies that have attempted to assess the impacts of OHV use on flat-tailed horned lizards have been inconclusive. In a small number of plots (n=6) at the Imperial Sand Dunes in southeastern California, Bury and Luckenbach (1983) found that areas impacted by OHV use appeared to have lower abundance of rodents, lizards, and plants than in an equal number of control plots where there was no OHV use. However, in plots of different OHV use classification, Wone *et al.* (1990) and Wright (1993) found no difference in the abundance of flat-tailed horned lizard scat. Klinger *et al.* (1990) were not able to assess the effects of varying levels of OHV activity because the different levels of OHV activity which they examined occurred in different habitat types. Some disturbance due to OHV use is unauthorized, but information concerning the amount and impact of unauthorized use is unavailable. While OHV activity poses a potential local threat to individual flat-tailed horned lizard populations, there is no documentation that OHV use poses a significant threat throughout the range of the species.

Residential, recreational and industrial development on private lands threaten some populations of flat-tailed horned lizards within the range of the species. However, because at least 50 percent of the habitat available to the species is located on public lands, because conservation measures are in place on these lands, and because the likelihood of large scale recreational and industrial development on these lands is low, urban, recreational, and industrial development does not significantly threaten the species.

Agricultural conversion is one of the primary causes of habitat loss for the flat-tailed horned lizard. Conversion continues on many private parcels throughout the range of the species, most notably in Coachella Valley in Riverside County, and near San Luis and Yuma, Arizona. Like urban and industrial development, this impact is anticipated to occur largely on private lands. Agricultural conversion on public lands managed by signatories of the CA is not anticipated, but if it occurred, it would be subject to mitigation and compensation measures outlined in the Management Strategy. In addition, the signatories have committed to not authorize agricultural development in MAs. Because of the large acreage of habitat that exists on public lands where agricultural conversion is less likely to occur, the mitigation and compensation measures associated with surface disturbance on public lands managed by CA signatories, and the acreage further protected by the surface disturbance cap placed on MAs, agricultural conversion threatens local populations of the flat-tailed horned lizard, but does not threaten the species as a whole at this time.

Sand and gravel extraction, and canal, pipeline, and transmission line construction are impacts on flat-tailed horned lizard habitat that have occurred on private and public lands, and may continue to do so in the future. Canals, such as the All-American and Coachella Canals, likely constitute complete or near complete barriers to movement of flat-tailed horned lizards, resulting in habitat fragmentation. The current extent of sand and gravel extraction pits on public lands is not documented, but Rado (1981) estimated 2,070 ha (5,120 ac) of active and intermittent sand and gravel quarries. This acreage represents a small percentage of the habitat present on public lands. Signatories to the CA have committed to locating such projects to areas outside of MAs to the maximum extent possible, and will apply appropriate mitigation and compensation measures, as identified in the Management Strategy, to all such projects. The BLM has required appropriate mitigation and compensation measures on BLM land since 1990.

The Area Service Highway, a proposed highway that would connect Interstate 8 at Araby Road to the United States-Mexico Border, would fragment an area of high quality habitat. According to Hodges (1997), it would also result in approximately 830–1,040 ha (2,040–2,560 ac) of lost habitat and mortality of lizards. The highway is proposed for alignment along a portion of the western boundary of the Yuma MA. The habitat loss and potential future mortality and indirect impacts associated with construction of this road represent a local threat to the lizard population. This impact will be mitigated by on-site minimization measures and compensation fees which will be used for habitat acquisition within MAs.

Because of the large amount of flat-tailed horned lizard habitat located on public lands within the United States and the reduction of threats on these lands due to changing land-use patterns and conservation efforts of public agencies, threats due to habitat modification and loss do not warrant listing of the species at this time.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Although horned lizards have been popular in the pet industry, flat-tailed horned lizards are difficult to locate due to their cryptic coloration. No threat from overutilization of this species is known at this time.

C. Disease or Predation

The Service is aware of parasitism by nematodes and red mites in some flat-tailed horned lizards (Norris 1949), but this is not considered to be a threat to the species (Bolster and Nocol 1989). Flat-tailed horned lizards are preyed upon by loggerhead shrikes, round-tailed ground squirrels, snakes, and canids (Muth and Fisher 1992) as well as American kestrels, common ravens, and burrowing owls (Duncan *et al.* 1994). Because lizards remain on the surface and sleep at night, they may also be subject to predation by scorpions (Rorabaugh, *pers. comm.* 1997). Recent studies on telemetered animals in Arizona have revealed a high level of predation, with 30 percent of the marked lizards suffering mortality due to predation. Round-tailed ground squirrels and loggerhead shrikes were the primary predators identified. Further research is necessary on the effects of predation, and abundance and distribution of predators before the importance of this factor can be fully understood. There is no evidence of population declines in extant habitat where these predator species occur. Thus, based on the available data, disease and predation do not significantly threaten the species.

D. The Inadequacy of Existing Regulatory Mechanisms

The conservation of this species is linked to the protection of the desert habitat. As outlined in the proposed rule, numerous regulatory mechanisms are currently in place to protect the flat-tailed horned lizard. In addition to the regulatory mechanisms in existence at the time of publication of the proposed rule, the CA and Management Strategy outlined in the ''Background'' section of this notice have been signed by the

Service, the BLM in California, the BLM in Arizona, the California Department of Parks and Recreation, the Arizona Department of Game and Fish, the BoR, the Commanding Officer of the Barry M. Goldwater Range, and the Commanding Officer of Naval Air Field El Centro. This agreement and associated strategy provide a framework for continued management of the flat-tailed horned lizard within the MAs designated by each of the landholding signatories.

The States of California and Arizona prohibit the collection of flat-tailed horned lizards except by permit. The Arizona Game and Fish Department has further included the species on the List of Wildlife of Special Concern in Arizona. This list includes species that may be imperilled in Arizona. No state regulations protect the habitat of this species. Both the Arizona Game and Fish Department and the California Department of Parks and Recreation, however, have signed the CA and Management Strategy, which will provide for their continued participation in conservation efforts for this species. The Arizona Game and Fish Department does not own or manage flat-tailed horned lizard habitat but will continue to provide input on management decisions, as well as input regarding status and biology of the flat-tailed horned lizard. The state of California has designated part of the Anza Borrego Desert State Park as an MA, which will limit surface disturbance that could be experienced in the park. Management in Anza Borrego is compatible with lizard conservation, due to the emphasis placed on resource protection, regulations limiting vehicles to designated trails, and enforcement of these policies. These policies have been in effect for a number of years. The Ocotillo Wells State Vehicular Recreation Area (SVRA) has supported research on the flat-tailed horned lizard for several years, and will continue to do so as a signatory to the CA. The SVRA has been designated a ''Research Area'' in acknowledgment of continued support of research planned.

In 1990 the California Department of Fish and Game and the BLM developed a joint Flat-tailed Horned Lizard Management Plan to address the species' conservation on BLM lands in California. The overall management goal of this plan is to maintain stable populations in all crucial habitat areas and to promote species recovery on BLM lands in California. The BLM has been in the process of implementing this plan since 1990.

Within California, the lizard occurs in special management areas including three BLM Areas of Critical Environmental Concern (ACECs). These include the East Mesa, West Mesa and Yuha Desert ACECs. The ACECs overlap, in part, with the East Mesa, West Mesa, and Yuha Desert MAs. The East Mesa and Yuha Desert ACECs also fall within the boundaries of wildlife habitat areas that require preparation of habitat management plans to address the protection of special status species such as the flat-tailed horned lizard. This species also occurs within the boundaries of the San Sebastian Marsh ACEC and one Wilderness Study Area, the North Algodones Dunes Wilderness.

The ACEC and wildlife habitat area designations have had limited success in protecting flat-tailed horned lizard habitat. Management prescriptions within ACECs include measures such as restricting OHV activity, but ACEC management goals include a provision to ''provide for other uses in the designated areas compatible with the protection of significant natural and cultural resources'' (BLM 1980). Participation of the BLM in the development of the Management Strategy, and subsequent signing of the CA increase the protection of flat-tailed horned lizards that will occur within ACECs where they overlap with MAs. The increase in protection will occur as a result of the process identified to facilitate OHV route minimization within MAs, the prohibition of OHV competitive events within MAs, and the limitation of surface disturbance activities to one percent of the total area of MAs over the course of the next five years.

The North Algodones Dunes Wilderness is managed by the BLM for wilderness values. Motorized vehicular use is prohibited and the area shows little evidence of human intrusion. Limited habitat for the flat-tailed horned lizard exists in the wilderness area, but these populations are protected by this designation.

The flat-tailed horned lizard occurs in the Coachella Valley Preserve in Riverside County. It is reportedly not abundant within the Preserve, but these populations are not threatened.

In Arizona, the species occurs within the boundaries of the Gran Desierto Dunes ACEC and the extreme western portion of the Tinajas Altas Mountains ACEC. In addition, an MA on BLM, DoD, and BoR lands has been designated. This MA occurs in the area of high relative abundance identified by Rorabaugh *et al.* (1987). Protection on the MA will include a cap on future surface disturbance of no more than one percent over the course of the next five years, as well as other conservation measures identified as part of the Management Strategy. The U.S. Marine Corps has agreed to comply with the terms and conditions of a conference opinion issued by the Service whether or not the species is listed. Terms and conditions, which are currently being implemented, include among others, limitations on surface disturbance, establishment of a speed limit, and enforcement of ''no trespass'' requirements. In addition, the Marine Corps is acquiring State of Arizona inholdings within the MA on the Barry M. Goldwater Range.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural and manmade factors identified in the proposed rule as threats to the species included insecticide spraying associated with the Curlytop Virus Control Program and drought. Since publication of the proposed rule, the BLM has issued a Record of Decision prohibiting insecticide spraying in MAs. This spraying program was thought to have contributed to population declines in East Mesa (Bolster and Nicol 1989). Since impacts due to pesticide application have been reduced, this activity no longer threatens flat-tailed horned lizard populations within MAs.

Precipitation has been correlated with insect abundance and lizard densities (Turner *et al.* 1982). Within the range of the flat-tailed horned lizard, rainfall is highly unpredictable, both temporally and spatially (Turner and Brown 1982). Localized areas may experience long-term drought, which may result in local decreases in lizard populations. Because of the fragmented distribution of the flat-tailed horned lizard, this unpredictability in precipitation increases the chance of localized extirpations. Data are inadequate to properly assess the degree to which drought or other naturally occurring events may increase the probability of extirpation.

Finding and Withdrawal

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species. Flat-tailed horned lizard population trend data are inadequate to conclude that significant population declines have occurred in extant flat-tailed horned lizard habitat since publication of the proposed rule. Population trend information remains ambiguous due to uncertainties raised since publication of the proposed rule regarding survey methodology and analysis. Past and projected flat-tailed

horned lizard habitat loss due to agricultural, urban, industrial, and recreational development has and continues to occur on private lands. Large blocks of habitat with few anticipated impacts exist on public lands throughout the range of this species in East Mesa, West Mesa, Yuha Desert, Yuma, and Anza Borrego Desert. Since the publication of the proposed rule to list the flat-tailed horned lizard as threatened, several of the threats identified on public lands have been reduced or eliminated. Threats that have been reduced include those due to geothermal development, oil and gas development, and pesticide spraying. In addition, the conservation commitment of the agencies has increased with the signing of a CA and Management Strategy designed to protect the flat-tailed horned lizard on public lands. MAs have been designated in the Yuha Desert, West Mesa, East Mesa, Yuma Desert, and Anza Borrego State Park. Development of the CA has further reduced threats, as agencies begin to implement actions identified in the Management Strategy.

Because of re-evaluation of information presented in the proposed rule, significant reduction of threats on public land, and uncertainties regarding population trend data, the Service determines that the flat-tailed horned lizard does not meet the required criteria to afford this species threatened status under the Act.

The Service will work actively to gather additional information on its status as part of the Flat-tailed Horned Lizard Interagency Coordinating Committee. Further, the Service will continue to participate with parties of the CA to conserve this species as part of the Flat-tailed Horned Lizard Management Oversight Group.

References Cited

A complete list of all references cited is available at the Carlsbad Field Office (see **ADDRESSES** above).

Author

The primary author of this document is Sandy Vissman, Carlsbad Ecological Services Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 10, 1997.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 97–18688 Filed 7–14–97; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 070797C]

RIN 0648–AJ45

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Prohibited Species Catch Limit for Chionoecetes opilio Crab

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 40 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) for Secretarial review. Amendment 40 would establish a prohibited species catch (PSC) limit for *Chionoecetes opilio* crab in a newly established *C. opilio* Bycatch Limitation Zone (COBLZ) of the Bering Sea. Upon attainment of the *C. opilio* PSC limit, directed fishing for groundfish by vessels using trawl gear, except for pollock by vessels using nonpelagic trawl gear, would be prohibited within the COBLZ. This measure is necessary to protect the *C. opilio* stock in the Bering Sea, which has declined to a level that presents a conservation problem. The intended effect of the proposed action is to further limit crab bycatch in the Bering Sea groundfish fisheries.

DATES: Comments on Amendment 40 must be submitted on or before September 15, 1997.

ADDRESSES: Comments on the proposed FMP amendment must be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of proposed Amendment 40 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis are available from the North Pacific Fishery Management Council, 605 West Fourth Ave., Anchorage, AK 99501-2252; telephone 907-271-2809.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, immediately publish a document announcing that the plan or amendment is available for public review and comment.

Amendment 40 would authorize the annual specification of a PSC limit for *C. opilio* crab for the new COBLZ of the Bering Sea based on the total annual abundance estimate of *C. opilio* crab as indicated by the NMFS bottom trawl survey. The PSC limits would be determined as part of the annual BSAI groundfish specification process, after consultation with the Council.

A proposed rule that would implement Amendment 40 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the FMP amendment to be considered in the approval/disapproval decision on Amendment 40. All comments received on or before September 15, 1997, whether specifically directed to Amendment 40 or the proposed rule, will be considered in the approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on Amendment 40.

Dated: July 9, 1997.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–18472 Filed 7–14–97; 8:45 am]

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