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U.S. Fish & Wildlife Service
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PROGRAMMATIC SAFE HARBOR AGREEMENT
For the Oregon chub
(Oregonichthys crameri)

OREGON DEPARTMENT OF FISH AND WILDLIFE
U.S. FISH AND WILDLIFE SERVICE

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Working in Cooperation for the Conservation and Recovery of Oregon Chub

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PROGRAMMATIC SAFE HARBOR AGREEMENT WITH THE OREGON DEPARTMENT OF FISH AND WILDLIFE, AND PRIVATE PROPERTY OWNERS FOR VOLUNTARY ENHANCEMENT/ RESTORATION ACTIVITIES BENEFITING OREGON CHUB IN THE WILLAMETTE VALLEY, OREGON

This Programmatic Safe Harbor Agreement ("Agreement") is by and between the Oregon Department of Fish and Wildlife, a state agency ("ODFW" or "Permittee"), and the United States Fish and Wildlife Service, an agency of the United States Department of the Interior ("Service"). This Agreement shall become effective on the date of execution by the Service.

1. RECITALS

1.1 PURPOSES OF THIS AGREEMENT

The purposes of this Agreement are (1) to establish a collaborative process to implement conservation measures and to achieve a net conservation benefit for the Oregon chub (*Oregonichthys crameri*) ("Oregon chub") by protecting existing populations on private lands and reducing risks of loss of existing natural populations (donor sources) through the establishment of new populations at refugia sites with no or minimal threats; and (2) to establish a legal basis for the issuance of an "Enhancement of Survival" permit that will authorize incidental take of Oregon chub (as defined in Section 2, below) that may result from implementation of the conservation actions and other activities provided in this Agreement for the duration of the Agreement, and from activities that may occur after the Agreement has expired, provided that the latter incidental take does not lower the baseline condition of the Enrolled Properties (see definition of Enrolled Properties below).

1.2 GEOGRAPHIC SCOPE OF THIS AGREEMENT

Enrolled Properties qualifying for inclusion in the Agreement will be located within historically occupied watersheds of the Willamette River Valley between Oregon City and Oakridge, Oregon. Oregon chub were historically present in the following tributaries of the Willamette River: Clackamas River, Molalla River, South Santiam River, North Santiam River, Luckiamute River, Long Tom River, McKenzie River, Mary's River, Coast Fork Willamette River, Middle Fork Willamette River and the Mainstem Willamette River from Oregon City to Eugene. Appendix A delineates the historic distribution of Oregon chub and geographic extent of this Agreement.

1.3 SAFE HARBOR POLICY AND PROGRAM

This Agreement follows and is consistent with the Service's Safe Harbor Agreement final policies (64 Federal Register (FR) 32717) and final regulations, and implements the intent of the ODFW and the Service to follow the procedural and substantive requirements of the Endangered Species Act of 1973, as amended ("ESA") with respect to Safe Harbor Agreements. The Safe Harbor program encourages voluntary, proactive conservation efforts by non-Federal landowners by providing them certainty that future property-use restrictions resulting from prohibitions against incidental take will not occur if those conservation efforts introduce or attract Oregon chub to the Enrolled Properties or result in increased numbers or distributions of Oregon chub already present on the Enrolled Properties.

Under this Agreement, private lands may be enrolled through individual Cooperative Agreements ("CA") between the Service, the ODFW and landowners (landowners may be referred to as "Cooperators"). Cooperators will be issued a Certificate of Inclusion ("CI") which will allow activities on the Enrolled Properties to be included within the ODFW's Section 10(a)(1)(A) Enhancement of Survival permit (the "Permit").

1.4 VALUES TO SPECIES AND HABITATS

Conservation and preservation of the Enrolled Properties is valuable for the survival and recovery of Oregon chub, identified in Section 2. The Enrolled Properties (1) serve as new refugia populations of Oregon chub protected from non-native predators or other threats that typically impact naturally occurring populations, thereby minimizing risk of complete loss of extant donor populations and any associated loss of any unique genetic material; and (2) enhance the quantity and/or quality of suitable habitat for existing natural populations, thereby creating potential for expansion of the natural populations and increasing their ability to survive in light of the risks associated with non-native predators and other threats.

1.5 NET CONSERVATION BENEFIT

The Enrolled Properties contribute to the conservation and recovery of the Oregon chub by enhancing the quantity and/or quality of suitable habitat for existing natural populations or for new populations at refugia sites. Certain Enrolled Properties will increase the distribution of the Oregon chub within its historic range through the establishment of new, self-sustaining populations or through habitat improvements and flow management that promote natural movement of existing populations into previously inaccessible or unsuitable habitats. Management actions undertaken on the Enrolled Properties by the ODFW and Cooperators and described in this Agreement are beneficial to the Oregon chub and are consistent with the goals of recovery and long-term survival.

2. OREGON CHUB

This Agreement covers the federally listed Oregon chub. When signed, this Agreement authorizes the Service to issue a Permit under the ESA section 10(a)(1)(A) to the ODFW to allow incidental take of Oregon chub related to: 1) habitat restoration activities; and 2) return of site to baseline condition, if the latter is requested by the landowner before the permit expires.

3. DESCRIPTION OF ENROLLED PROPERTIES AND BASELINE CONDITIONS

3.1 ENROLLED PROPERTIES

Private landowners within the geographic scope of this Agreement as shown on Figure A are eligible to enroll their properties in the program for a minimum of 10 years. Conservation efforts will take place within the sub-basins of the Willamette Basin where all known remaining natural populations of the Oregon chub are concentrated and where recovery of the species has been identified as a priority. Sites suitable for establishing new populations through introductions will be within the same recovery area as the donor population. An exception could occur if an emergency translocation was necessary (i.e. chemical spill, desiccation, invasion or unauthorized introduction of nonnative fishes) and a suitable site within the sub-basin did not exist. In this case, a translocation from the population in peril to a site in another sub-basin may

occur. Sites will have favorable habitat characteristics for maintaining a viable population that will include, but may not be limited to the following: perennial water supply and low risk of desiccation; abundant submergent and overhanging vegetation; sufficient buffers and set backs from routine property maintenance; optimal water temperatures during spawning; and an absence or low risk of non-native predatory fish. Sites presently occupied by Oregon chub may be restored or enhanced to improve habitat connectivity and functionality that allow Oregon chub to expand its population size or distribution through natural movement. In some circumstances, reduction of habitat connectivity may be desired to protect a chub population from the impacts of nonnative fishes.

3.2 BASELINE CONDITION OF THE ENROLLED PROPERTIES

Initial baseline determinations will be made by the ODFW and/or the Service based on the presence or absence of Oregon chub on the site prior to introduction or habitat enhancements. The baseline for each CA must include an assessment of the number of Oregon chub at the new refugia site before translocations from the donor population to the new site occur or at an existing chub site prior to habitat enhancement, protection, or restoration. Each CA will include a baseline determination, map, and description of enrolled properties. The ODFW and the Service agree that the Safe Harbor baseline applicable to this Agreement will be determined prior to issuing a Certificate of Inclusion and will be carried out as follows:

3.2.1. Sites not currently occupied by Oregon chub will have a baseline condition of zero. An exception to this will occur in situations in which Oregon chub are not currently present but the landowner is willing to adopt a greater than zero baseline to allow the Enrolled Property to support enhanced conservation of the species even after the termination of the Agreement and/or an associated CA; such situations are referred to as "negotiated conservation baselines." For properties found to have a zero baseline condition, the ODFW may specify the baseline condition on the Certificate of Inclusion without Service approval. In order to achieve a net conservation benefit, there may be situations where the Service and/or the ODFW requires an elevated baseline to participate in this Agreement. The final baseline determination for properties enrolling without Oregon chub will be mutually agreed upon by the ODFW and the Cooperators.

3.2.2. For properties currently occupied by Oregon chub, the ODFW and the Service will jointly establish, with the consent of Cooperators, the baseline on a site-by-site basis until a Service-approved protocol for such determinations is developed. The ODFW and the Service will mutually agree on the protocol for determining baseline conditions and make refinements to the protocol over time as new and improved census techniques or technologies become available. Initially, the determination for baseline population abundance values for pre-existing populations will be based on a range of abundance values with associated confidence limits that describes the natural variability in abundance over time. As described above, a negotiated conservation baseline greater than the actual existing baseline may be adopted at the landowner's discretion to support enhanced conservation of the species at the Enrolled Property. This elevated baseline remains in effect after the termination of the Agreement and/or an associated CA.

4. MANAGEMENT AND RESTORATION ACTIONS, MONITORING AND REPORTING

4.1 MANAGEMENT ACTIONS

The ODFW may conduct the following management activities intended to benefit Oregon chub. Such activities may be applied adaptively to each Cooperator's Enrolled Property and will be further detailed in the individual CA's.

4.1.1 INTRODUCTION OF OREGON CHUB INTO NEW SITES IN ORDER TO ESTABLISH NEW VIABLE POPULATIONS THAT SERVE AS REFUGIA FOR DONOR POPULATIONS. Oregon chub will be collected during population surveys of donor populations conducted from April through May or from September through October and will be translocated to refugia sites using the protocol described in Appendix B. The ODFW and the Oregon Fish and Wildlife Service Office will jointly determine an appropriate donor population. No more than 10 percent of the donor population will be translocated in any one year unless a donor population is at imminent risk of extirpation due to desiccation, chemical spills or other uncontrollable threats. In this case, the entire donor population may be translocated. Establishing a self-sustaining population may require multiple introductions, which will occur in subsequent years during the same seasonal time periods as the initial introduction until: 1) the population abundance has reached the estimated carrying capacity of the refugia site; and 2) the genetic diversity of the introduced population matches that of the donor population. Genetic diversity will be monitored by the Service's Abernathy Fish Technology Center in Vancouver, Washington, or other Service-approved researchers.

4.1.2. RESTORATION AND ENHANCEMENT OF HABITAT CURRENTLY OCCUPIED BY OREGON CHUB. (1) Healthy, at-capacity Oregon chub populations may warrant protection from conditions incompatible with their conservation and survival. Landowners may be able to implement actions on their lands that decrease the threat these conditions pose to existing populations. The ODFW will advise participating landowners to avoid specific activities or adopt others to protect naturally occurring Oregon chub on Enrolled Properties. However, avoidance of activities that would otherwise be undertaken by the landowner and that would result in incidental take of Oregon chub is not considered a beneficial management action consistent with this Agreement because the landowner is already obligated under section 9 of the ESA to avoid such activities. (2) The ODFW will also determine which sites currently occupied by Oregon chub are suitable candidates for habitat restoration activities. For example, reconnecting isolated populations with the floodplain and natural flow regimes could create new habitat and potentially increase population abundance, distribution, genetic diversity and resiliency by improving movement and exchange of natural populations. The ODFW will assess fish community composition within water bodies adjacent to isolated habitats containing Oregon chub to document the presence of exotic predatory species. The ODFW in consultation with the Service will determine whether the benefits of habitat restoration outweigh the risks of mortality associated with predation or other factors.

4.1.3 ALLOW SERVICE AND THE ODFW ACCESS TO THE PROPERTY TO INTRODUCE OREGON CHUB, CONDUCT SURVEYS, MONITOR HABITAT CONDITIONS, AND TRANSLOCATE OREGON CHUB FOR ESTABLISHMENT OR ENHANCEMENT OF SUBSEQUENT NEW POPULATIONS. The ODFW will monitor the Oregon chub population for abundance, genetic diversity and habitat conditions within and across newly established populations during the sampling seasons from April through May or from September through October. During survey efforts, the ODFW will document the presence or absence of non-native fish or amphibians. If a donor population declines to such a level that its continued existence may be threatened, the donor population may be supplemented using Oregon chub from a newly established population, provided the reasons for the decline are no longer present. Translocations of Oregon chub from newly established populations to address imminent threats will be coordinated between the ODFW and the Service in advance of any translocation activities. The entire population of Oregon chub may be translocated if an imminent threat to the new population is detected. Factors that might pose an imminent threat include, but are not limited to, disease, contamination of the pond or the establishment of non-native predators or competitors. The Service and the ODFW will always attempt to give at least 48 hours advanced notice to landowners before accessing the property.

The management actions listed above will produce a net conservation benefit to the species by increasing the distribution of this species within its historic range and by creating a network of refugia populations and genetic reserves. This approach reduces the probability that a single catastrophic event could affect all populations equally and thus lowers the risk of species extinction. Creating and maintaining a sufficient number of isolated refugia populations in artificial habitats may provide sufficient reserves to allow recovery efforts to experiment more liberally with reintroduction into natural habitats. Based on a 5-year review of Oregon chub, the species now meets the population criteria for downlisting from endangered to threatened[1] and increasing the number of Oregon chub populations is central to furthering the recovery of the species.

Improving habitat connectivity at sites with existing natural populations will aim to restore the natural process of seasonal flooding and create new habitat for Oregon chub and greater movement, interaction and gene exchange among populations. The conservation benefits of reconnecting floodplain habitat and increased mobility must outweigh the risks associated with exposure to threats and will be evaluated on a case-by-case basis.

Nothing in this Agreement prevents the ODFW, or the Cooperator after consultation with the ODFW and the Service, from implementing restoration and management activities not described in the Agreement, as long as such actions maintain the baseline conditions, enhance Oregon chub habitat quality, quantity or access, and do not adversely affect the beneficial actions set forth in this Agreement.

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[1] U.S. Fish and Wildlife Service. 2008. Oregon chub (*Oregonichthys crameri*) 5-Year Review Summary and Evaluation. Oregon Fish and Wildlife Office, Portland, February 2008.

4.2 MONITORING AND REPORTING

The ODFW will be responsible for annual monitoring and reporting, provided adequate funding is available from the Service or other sources for these activities. If the ODFW does not receive adequate funding to monitor, the Service will monitor based on the availability of staff. Monitoring activities will be undertaken using the protocol described in Appendix C at each Enrolled Property. Changes to the annual monitoring program may occur with the consent of the Service. Annual reports will be due no later than December 31 of each year and will include the following information:

4.2.1 Number of Oregon chub translocated from the donor population to Enrolled Properties and/or current population estimates at Enrolled Properties;

4.2.2 Results of any translocation efforts and the status of Oregon chub populations in both the donor site and the recipient site;

4.2.3 Habitat conditions at Enrolled Properties including habitat characteristics and other factors determined to be important to Oregon chub survival;

4.2.4 Compliance of Cooperators with the conditions set forth in this document, including the status of management activities completed at Enrolled Properties;

4.2.5 Presence of other fish and amphibians at Enrolled Properties and a determination of whether the presence of non-native predators threatens the survival of Oregon chub at Enrolled Properties;

4.2.6 Recommendations for translocation of Oregon chub from Enrolled Properties due to overcrowding, imminent threat to the populations or other reasons; and

4.2.7 Management recommendations for Enrolled Properties or the surrounding habitat.

Cooperators shall allow access to the ODFW or Service (or designee thereof) to monitor habitat conditions to determine long-term success of such actions.

5. RESPONSIBILITIES OF THE ODFW

5.0 ADVANCED NOTIFICATION

The ODFW will provide the Cooperator with a minimum of 48 hours advanced notification prior to accessing the Enrolled Property, unless the Cooperator agrees to less notification time.

5.1 COOPERATIVE AGREEMENT DEVELOPMENT

5.1.1 The ODFW will apply for and hold the Permit and enroll non-Federal landowners (Cooperators) with Certificates of Inclusion under the Permit when Cooperators sign CA's. The Service has provided a CA template, attached as Appendix D, and a CI template, attached as Appendix E. Each CA will include, at a minimum: (1) tax map of the Enrolled Properties; (2) description of the Enrolled Properties and any routine activities undertaken by the Cooperators in the vicinity that could result in incidental take; (3) identification of the existing Oregon chub baseline (i.e., the mutually agreed upon baseline) on the Enrolled Properties, including an accurate estimate of population size, and the negotiated conservation baseline (if applicable); (4) specific proposed habitat improvements and other conservation measures that will be implemented; (5) the extent and nature of any incidental take that may occur from proposed habitat improvements and other conservation measures; (6) the term of the CA (10 year minimum); (7) a plan for monitoring and evaluation of the translocation and any conservation activities; (8) and further details of the Cooperator's and the ODFW's respective responsibilities under the CA.

5.1.2 The ODFW will develop CA's that include negotiated conservation baselines as the mutual agreed upon baselines. The ODFW and the Service have committed to a target that at least 20 percent of the agreements developed by the ODFW will include a baseline greater than the actual existing baseline in order to allow the Enrolled Properties to support enhanced conservation of the species even after the termination of the CA's.

5.1.3 The ODFW will make available to the Service, upon request, records and materials in its possession relating to the implementation of the program, including executed CA's.

5.1.4 Upon execution of each CA, individual Cooperators will be issued a CI under the Permit. The Certificate of Inclusion authorizes incidental take of Oregon chub during the permit term, provided such take does not result in conditions for Oregon chub below the mutually agreed upon baseline and is a result of otherwise lawful activities within the Enrolled Properties. An exception to the above is noted in section 5.5, below.

5.1.5 The ODFW will work with Cooperators to attempt to ensure that no more than 10 percent of the CA's developed will be terminated by the Cooperators prior to the full term of the agreements.

5.2 COST SHARE ADMINISTRATOR

If funding is provided to the ODFW by the Service, the ODFW will serve as the administrator of contracts, services, materials acquisitions, and disbursement of the Service's cost-share for activities related to project completion.

5.3 COOPERATIVE AGREEMENT IMPLEMENTATION

The ODFW will designate a Project Field Manager and will provide oversight of baseline assessments of lands enrolled in the Agreement, implementation of management actions,

compliance monitoring (as further described below), annual effectiveness (biological) monitoring, and technical assistance to the maximum extent practicable in developing and implementing management activities as specified in the CA.

5.4 COMPLIANCE MONITORING AND REPORTING

The ODFW will implement compliance monitoring for management or restoration activities specified in each CA, as well as take authorized by the Permit. The ODFW will monitor Oregon chub population status and habitat conditions within the CA area annually, as long as the Service provides funds for the work. If the Service does not fund the monitoring, the ODFW will not be held to this monitoring responsibility. The ODFW will conduct the monitoring by contacting each enrollee at intervals appropriate to evaluate and assess implementation and maintenance of management activities specified, identify any modifications that may be necessary, and discuss other issues. Changes to the schedule and structure of monitoring and reporting activities may occur upon agreement between the ODFW and the Service. The annual report shall be due no later than December 31 of each year, and shall include the following:

5.4.1 Status of the Permit, including the total number of translocations, a list of the all enrolled properties and the estimated size of Oregon chub populations at each Enrolled Property.

5.4.2 Baseline conditions of newly Enrolled Properties, including actual baseline and the negotiated conservation baseline (if applicable).

5.4.3 Current status of Enrolled Properties, including: (i) status of habitat components (habitat area, aquatic vegetation, adequate temperatures for spawning, adequate depth to prevent desiccation, and others deemed appropriate) determined to be important to Oregon chub; (ii) description of management or restoration actions undertaken pursuant to this Agreement and subsequent outcomes if known; and (iii) description of any activities that resulted in or may have resulted in incidental take of Oregon chub, such as habitat modification or destruction, predation, emergency actions taken to protect life or property, etc.

5.5 POTENTIAL INCIDENTAL TAKE

Incidental take should be avoided as much as possible at all times. However, incidental take resulting from lawful activities undertaken after this Agreement and/or a CA expire is permissible provided such take does not lower the mutually agreed upon baseline condition of Enrolled Properties and occurs under the terms and duration of the permit. During the CA time period, incidental take resulting from conservation activities otherwise approved and implemented under this Agreement may produce conditions below the mutually agreed upon baseline provided that the reduction (1) is minor and temporary; (2) does not delay or reduce attainment of the anticipated conservation benefit on the Enrolled Properties; and (3) does not adversely impact the viability of any Oregon chub population that may currently occur on the Enrolled Properties.

6. COOPERATORS (LANDOWNERS) ROLE

6.1 The minimum responsibilities of the Cooperator/Landowner are set forth in the Cooperative Agreement (CA), the form of which is attached as Appendix D.

6.2 Incidental take should be avoided as much as possible at all times. However, incidental take resulting from lawful activities undertaken after this Agreement and/or a CA expires is permissible provided such take does not lower the mutually agreed upon baseline condition of Enrolled Properties and occurs under the permit's terms and duration. During the CA time period, incidental take resulting from conservation activities otherwise approved and implemented under this Agreement may produce conditions below the mutually agreed upon baseline provided that the reduction (1) is minor and temporary; (2) does not delay or reduce attainment of the anticipated conservation benefit on the Enrolled Properties; and (3) does not adversely impact the viability of any Oregon chub population that may currently occur on the Enrolled Properties. Cooperators will consult the ODFW prior to the implementation of activities so that the ODFW can recommend procedures to minimize incidental take.

7. JOINT RESPONSIBILITIES OF THE ODFW AND COOPERATORS

7.1 SUPPLEMENTAL REPORTING

The ODFW and Cooperators shall report to the Service in writing any observed mortalities, injuries, or diseases of Oregon chub on the Enrolled Properties within 14 days of observation.

7.2 NOTIFICATION OF PLANNED ACTIVITIES

The ODFW and Cooperators shall notify the Service 60 days in advance of any otherwise lawful activities planned to be undertaken on the Enrolled Properties that the ODFW or the Cooperator reasonably anticipates could result in the authorized take of Oregon chub (as described in section 5.5 and 6.2.). During such 60-day period, the ODFW and Cooperators shall consult with the Service to attempt to minimize the effects of the planned activities on Oregon chub and will provide the Service the opportunity within such 60 day period to participate in the planning or process of capturing and/or relocating any potentially affected Oregon chub.

7. 3 COMPLIANCE WITH LAWS

Permit issuance will not preclude the need for the ODFW and Cooperators to abide by all other applicable Federal, State, and local laws and regulations that may apply, including but not limited to those imposed by relevant land use authorities. As private landowners enroll in the Agreement and develop individual site-specific management plans, the ODFW will ensure plan compliance with Section 106 of the National Historic Preservation Act prior to any ground-disturbing activity.

8. SERVICE RESPONSIBILITIES

8.0 ADVANCED NOTIFICATION

The Service will provide the Cooperator with a minimum of 48 hours advanced notification prior to accessing the Cooperator's property, unless the Cooperator agrees to less notification time.

8.1 ISSUE PERMIT

Upon execution of the Agreement and satisfaction of all other applicable legal requirements, the Service agrees to issue the Permit authorizing take of the Oregon chub as a result of lawful activities on the Enrolled Properties in accordance with the terms of such Permit. The term of the Permit will be 30 years. The Service will provide the ODFW and Cooperators technical assistance in preparing the permit application and individual CA's, and developing and implementing management activities as specified in the CA, to the maximum extent practicable.

8.2 REFUGIA SITES AND RESTORATION

At the request of the ODFW, the Service will help with the selection of potential introduction sites for Oregon chub and review plans for translocating individuals from donor populations to refugia sites or from refugia sites to donor population or to additional introduction sites. The Service may consult the Oregon chub working group on the conservation benefits and risks of restoring off-channel and channel habitat for re-establishing floodplain connectivity and natural inundation. The Service will determine on an individual basis whether planned restoration activities provide a net benefit to Oregon chub and advise the ODFW accordingly.

8.3 GENETIC DIVERSITY

The Service will review monitoring data on the size of introduced populations at Enrolled Properties until Oregon chub abundance at the site reaches carrying capacity and/or is equal to or exceeds the chub abundance at the donor site. At this point, the Service and the ODFW will seek funding to compare the genetic composition of both donor and introduced populations. If the Enrolled Properties population has lower genetic diversity, then subsequent translocation, not to exceed 10 percent of the donor population, will occur annually until the two populations have similar genetic diversity.

8.4 TRACKING PROGRESS TOWARD RECOVERY

The Service recognizes that the recovery and long-term survival of Oregon chub is dependent on maintaining a minimum percentage of self-sustaining populations above a baseline condition of zero in perpetuity. The Service set a target that at least 20 percent of the cooperative agreements developed by the ODFW that should include a baseline greater than the actual existing baseline in order to allow the Enrolled Properties to support enhanced conservation of the species even after the termination of the agreements and of this Agreement. Giving landowners the opportunity to agree to a negotiated conservation baseline ensures some portion of self-sustaining populations established or enhanced under this Agreement will permanently contribute to recovery. The Service will track the number, location and size of each population classified as having elevated baselines for purposes of recovery planning.

8.5 CONSULTATION

As needed, the Service will be responsible to seek out and incorporate input from non-federal landowners, the ODFW, Tribes, Oregon Parks and Recreation Department, and other interested parties as the Service deems appropriate.

8.6 FUNDING INFORMATION

The Service will provide information to the ODFW and Cooperators on Federal funding programs and will work to secure funding for long-term monitoring to ensure that the conditions of each CA are being met, to evaluate effectiveness of restoration and management activities, and to evaluate baseline conditions of future Enrolled Properties.

8.7 REVIEW AND RENEWAL OF COOPERATIVE AGREEMENTS

At the ODFW's request, the Service will be available to review and provide input on Certificates of Inclusion and CA's for Cooperators meeting the enrollment conditions of the Agreement. If Service review is requested by the ODFW, the Service will have 60 days from receipt to review and concur with the CA, or to decline concurrence, in which case the Service will provide a written explanation for its non-concurrence, and the ODFW will not proceed with the CA. If the Service does not provide written notice of its decision to the ODFW within 60 days, the ODFW and the Cooperator may execute the CA, which, in turn, will allow issuance of a CI to the Cooperator. The Service will allow the Cooperator to renew the Cooperative Agreement, or a negotiated modified version thereof, for an additional 10 years or more if a request is made in writing at least 30 days prior to the CA's expiration.

9. INCIDENTAL TAKE PERMIT

9.1 ASSURANCES TO PERMITTEE

Provided such take satisfies the criteria described in sections 5.5 and 6.2. of this Agreement, the ODFW and Cooperators, their agents and assigns, shall be authorized to take Oregon chub on the Enrolled Properties in the following circumstances:

9.1.1 Implementing the management activities identified in Part **4.1** of this Agreement.

9.1.2 Carrying out any normal (e.g., agricultural, silvicultural, recreational, or other) activity on, or adjacent to, the Enrolled Properties after restoration and management activities identified in this Agreement and the respective CA's have been initiated.

9.1.3 Making any lawful use of the Enrolled Properties after the management activities identified in this Agreement and the respective CA's have been fully implemented.

The maximum number of Oregon chub individuals that can be taken pursuant to this Agreement and the Permit will not exceed the number of additional Oregon chub individuals resulting from the mutually agreed upon baselines created through this Agreement. The target for the net adverse impact of the incidental take authorized under this program is, at the very most, a return to the *status quo ante* or current baseline for 80 percent of the CA's developed through this Agreement, and a reduction to some as yet unquantifiable condition greater than the *status quo ante* or current baseline for the remaining 20 percent of CA's due to the Agreement's provisions for negotiated conservation baselines. Incidental take authorized during the terms of CA's as necessary to implement beneficial conservation actions are anticipated to be *di minimus*—limited to levels that do not adversely impact the viability of any Oregon chub population that may currently occur on the Enrolled Properties. In no event may habitat be impacted until 60

days after the Service has received written notice of potential take of Oregon chub in order to relocate any Oregon chub from the area to be impacted, as deemed appropriate by the Service.

9.2 EFFECTIVE DATE

The Permit will take effect for Oregon chub as of the date of the last signature of this Agreement.

9.3 TERM OF AGREEMENT AND PERMIT

The duration of this Agreement and Permit is for a period of 30 years, unless earlier terminated pursuant to the terms of this Agreement.

9.4 PERMIT AMENDMENT

The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The party proposing the amendment shall provide a statement describing the proposed amendment and the reasons for it.

9.5 PERMIT RENEWAL

The Permit may be renewed in accordance with all applicable legal requirements, and specifically those administered under the ESA and the Service's permit regulations (see 50 CFR 13.22). A Permit renewal request needs to be in writing at least 30 days prior to the permit's expiration, certifying that all statements and information in the original application are still correct or include a list of changes.

9.6 SUSPENSION AND REVOCATION

The Service may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to Oregon chub (50 CFR 13.28(a)). Prior to revocation, the Service shall exercise all possible measures to remedy the situation without suspending or revoking the Permit, and shall provide notice in writing to all Cooperators of the potential revocation.

10. MODIFICATIONS

10.1 ASSURANCES TO THE PERMITTEE

To the extent permitted by law, in accordance with 50 CFR 17.32(c)(5)(ii), the Service hereby provides assurances to the Permittee that the Service may not require additional or different management activities to be undertaken by the Permittee without the consent of the Permittee.

10.2 FUNDING CONTINGENCY

The ODFW will be responsible for implementation of their commitments outlined in this Agreement. In the unforeseen event that insufficient funding from the Service or other sources precludes the ODFW from implementing the Agreement for Oregon chub, then the Service will release the ODFW of its responsibilities under this Agreement and assume all responsibility associated with its implementation.

10.3 BASELINE ADJUSTMENT

Baseline conditions set forth in the respective CA's may, by mutual agreement of the ODFW, the Service and the applicable Cooperator, be adjusted if, during the term of the CA and for reasons beyond the reasonably foreseeable control of the Cooperator, the utilization of the Enrolled Properties by the Oregon chub or the quantity or quality of habitat suitable for or occupied by the Oregon chub is changed from what it was at the time the CA was executed.

10.4 MODIFICATIONS

Either the ODFW or the Service may propose modifications or amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, either the ODFW or the Service, as applicable. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The ODFW and the Service will respond to proposed modifications within 60 days of receipt of such notice. Cooperators will be informed of any modifications to the Agreement 30 days before the amendment process concludes. Proposed minor modifications will become effective upon the written concurrence of the ODFW and the Service. Proposed major modifications will become effective upon completion of a major amendment process, which includes a 30-day public comment period. Minor modifications are actions that were within the scope of the original document or that relate to administrative changes or anticipated circumstances. A major modification is a proposed change not part of the original Agreement.

10.5 TERMINATION OF AGREEMENT

As provided in Part 12 of the Service's Safe Harbor Policy (64 FR 32717) the ODFW may terminate this Agreement for circumstances beyond its control upon 60 days written notice to the Service and the Cooperators. In such event, the Cooperators shall be permitted to return the Enrolled Properties to baseline conditions even if the management and restoration activities described herein have not been fully implemented, provided that the ODFW gives the Service notice thereof as provided in Section 7.2 prior to carrying out any activity likely to result in the taking of Oregon chub. Termination for any other reason shall require 90 days prior written notice by the ODFW to the Service and each Cooperator. In that event, the Service will seek to obtain another person or entity to sign and take over the responsibilities under the Agreement, or have the individual Cooperators sign individual Agreements. If the ODFW terminates the Agreement for any other reason, the responsibilities and actions covered by the Permit shall be assumed by the Service.

10.6 CATASTROPHIC EVENTS

The Permittee and the Cooperator will not be held responsible for take below mutually agreed upon baseline conditions in the event of major adverse habitat impacts (such as destruction of all or the majority of Oregon chub population or habitat) resulting from catastrophic events including but not limited to "acts of God", or sudden actions of the elements such as floods, rainstorms, severe drought, or insect/disease epidemics.

10.7 REMEDIES

The ODFW and the Service shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no party shall be liable in damages for any breach of this Agreement, or any performance or failure to perform an obligation under this Agreement.

10.8 DISPUTES
The ODFW and the Service agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by both the ODFW and the Service.

10.9 INTERPRETATION
The CA's will incorporate the terms of this Agreement. Any inconsistency between this Agreement and any CA shall be governed by the terms of this Agreement.

11. MISCELLANEOUS

11.1 BINDING EFFECT
This Agreement and the Permit shall be binding on and shall inure to the benefit of the ODFW and the Service (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

The rights and obligations of the landowners under the CA's are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25, upon consent of the successor or transferee of the land, execution of a new CA, and issuance of a CI. A new owner(s) will have the same rights and obligations with respect to the Enrolled Properties as the original owner. Assignment or transfer of the Permit shall be governed by Service regulations in force at the time.

11.2 ANTI-DEFICIENCY ACT
Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The ODFW and the Service acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

11.3 NO THIRD PARTY BENEFICIARIES
This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it be deemed to authorize any third party to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the ODFW and the Service with respect to third parties shall remain as imposed under existing law.

11.4 OTHER LISTED SPECIES
Other listed species may occur in the future on the Enrolled Properties as a direct result of the management actions specified herein. If that occurs and the ODFW so requests, the ODFW and the Service may agree to amend the Agreement and associated permit to cover additional species and to establish appropriate baseline conditions for such other species.

11.5 NOTICES

Any notices and reports required by this Agreement shall be delivered to the persons at the addresses listed below:

Oregon Department of Fish and Wildlife
Native Fish Investigations Project
28655 Highway 34
Corvallis, Oregon 97333
(541) 757-4263

State Supervisor
Oregon Fish and Wildlife Office
U.S. Fish and Wildlife Service
2600 SE 98th Avenue, Suite 100
Portland, Oregon 97266
(503) 231-6179

This Agreement is to be effective as of the date of execution by the Service.

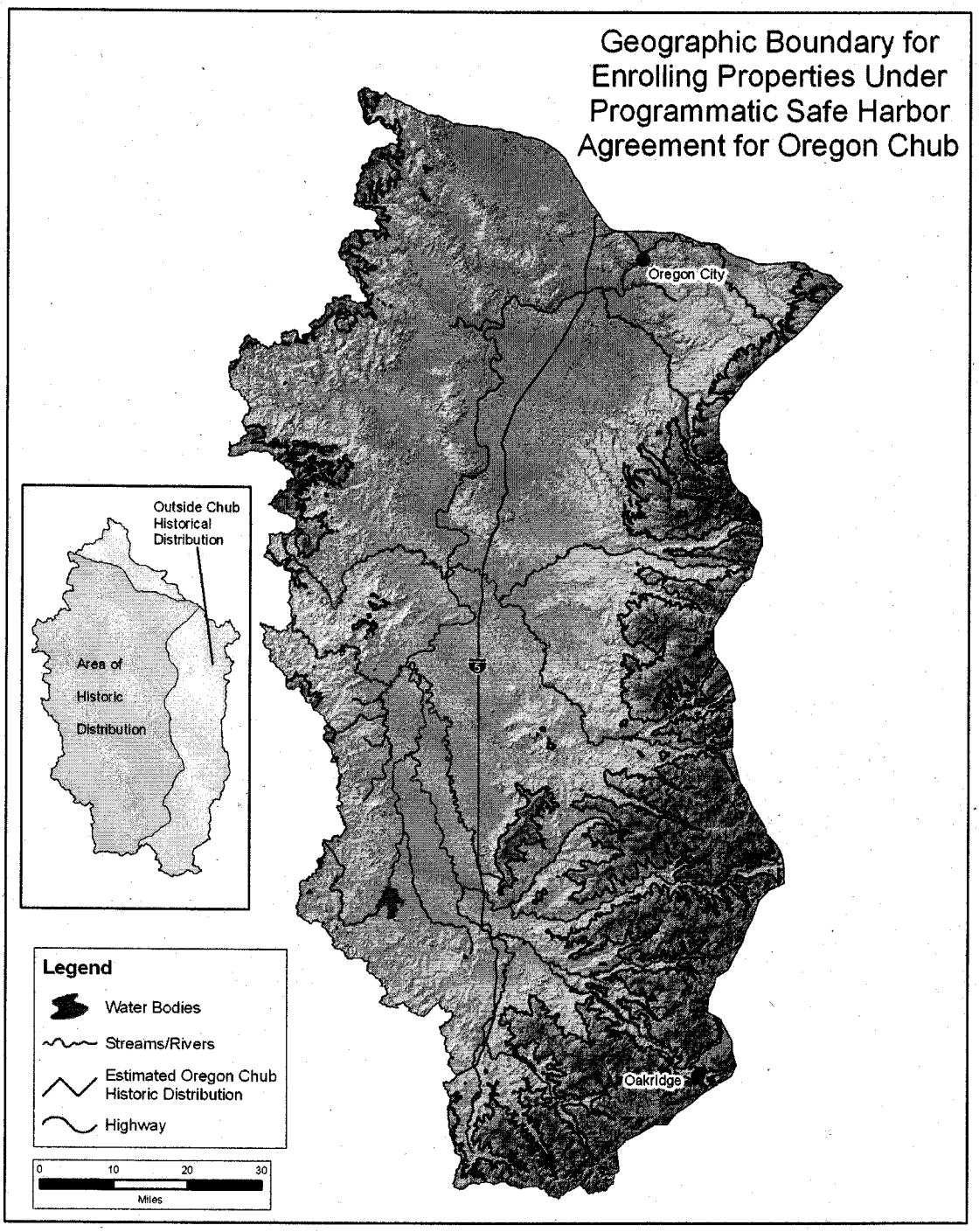
U.S. Fish and Wildlife Service

By: _____ 8/10/09
State Supervisor, Portland, Oregon — Date

Oregon Department of Fish and Wildlife

By: _____ 8/24/09
Title: Deputy Director — Date

Appendix A: Geographic Scope of Agreement



No warranty is made by the U.S. Fish and Wildlife Service as to the accuracy, reliability, or completeness of these data for individual or aggregate use with other data. Original data were compiled from various sources. Spatial information may not meet National Map Accuracy Standards. This information may be updated without notification.

August 22, 2008
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Oregon Fish and Wildlife Office

Appendix B: Oregon Chub Translocation Guidelines

The Oregon Chub Translocation Guidelines stated in the Oregon chub Recovery Plan are based on the 1992 Interagency Conservation Agreement that specified guidelines for reintroducing Oregon chub into their historic range. These are adapted from Williams *et al.* (1998), and are consistent with Oregon Department of Fish and Wildlife policy and responsibility for finfish introductions (Oregon Department of Fish and Wildlife 1982).

1. Source Stock Criteria. Obtain introduction source stock of sufficient number and character. If the source population is not threatened by imminent loss, no more than 10 percent of the population should be removed annually. A minimum of 500 fish will be introduced. Introductions of fish in successive years are permitted to meet this criterion.

If the donor population is sufficiently large such that the 500 fish minimum can be collected without exceeding removal of 10 percent of the population (i.e. adult population >5000 fish), then all 500 fish will be transported in one collection event. If the donor population is less than 5000 fish then 10 percent will be collected and translocated in one year and this process will be repeated (10 percent of donor population collected) each year until a total of 500 fish has been translocated.

2. Collection and Transport Methodology. Oregon chub will be captured using baited minnow traps and/or pole seines. Fish will be collected in 19 L (5 gallon) buckets and transferred to a large cooler (minimum of 76 L or 20 gallon) for transporting. Fresh water, of the same temperature as pond, will be placed in the cooler immediately prior to transport. Temperature will be recorded. Transport time will be minimized. Condition of fish will be monitored during transport, if time of transport exceeds 15 minutes. Approximately 19 L of additional fresh water will be transported in a separate container and will be used to supplement the transport water in the event that the fish appear to be stressed due to low oxygen or ammonia buildup.

The temperatures of water in both the cooler and the introduction pond will be measured upon arrival at the introduction site. Fish will be acclimated over a period of 20 minutes prior to release.

3. Timing. Introduce stock under the most favorable weather and hydrologic conditions ensuring that water temperatures and dissolved oxygen conditions are ideal. Avoid transfers during the spawning season. Document the date, number of fish stocked, source population, introduction site, and persons conducting the introduction.

4. Post-Introduction Activities. Conduct systematic monitoring of introduced populations. Determine cause of unsuccessful introductions. Restock if warranted. Document findings and conclusions.

Appendix C: Oregon Chub Monitoring Protocol

1. Physical Habitat Assessment. The following parameters will be collected: substrate (percent silt and organics), depth (maximum, mean, and range), water temperature, and total surface area. Aquatic vegetation will be identified to genus and percent of surface area cover will be recorded using ocular estimates. Water quality parameters including pH, dissolved oxygen, specific conductance, redox potential, and total dissolved solids will be measured every two years, conditional upon the availability of a the Service hydrolab. Temperature during the breeding season will be measured annually until the introduced population becomes established and recruitment has been verified.

2. Population Abundance Estimates. Oregon chub population estimates will be obtained annually. Minnow traps, measuring 23 x 46 centimeters with 6.4-millimeter mesh, will be used to capture fish for marking. The traps will be baited with a half slice of bread and set for up to 18 hours. A subsample of the fish collected in the traps will be measured, given a partial upper caudal fin clip, and returned to the water. This procedure will be repeated for several days. Each subsequent day all unmarked fish will be marked and all previously marked fish will be counted in the sample. Population estimates will be made each day and the ratio of the number marked to the total estimate will be compared to determine the approximate percentage of the total population that was marked. Marking will continue until approximately 15 percent of the Oregon chub population is marked. All fish will be returned to the water. Population size will be estimated using single-sample mark-recapture procedures (Ricker 1975). To calculate population abundance, the total number of marked fish will be used, and the catch and recaptures from the last sample date.

3. Spawning Observations in the Field. Qualitative surveys will be conducted to determine Oregon chub spawning activity and success. Fry presence and relative abundance and/or spawning behavior will be monitored through snorkeling and direct observation. Spawning behaviors will be recorded as evidence of spawning, i.e., territory establishment by males, aggressive skirmishes between males, and courting behaviors.

Appendix D: Cooperative Agreement Template

LANDOWNER COOPERATIVE AGREEMENT TEMPLATE
for Oregon Chub in the Willamette Valley (Oregon)

1. PARTIES AND PURPOSE. This Cooperative Agreement ("CA") is between the **Oregon Department of Fish and Wildlife** ("ODFW"); and **[Property owner]** ("Cooperator"). This agreement is intended to promote good land stewardship and increases in the number and/or distribution of Oregon chub (*Oregonichthys crameri*) populations by assisting the Cooperator in carrying out actions that benefit the species.

Participation in this Cooperative Agreement is a prerequisite for obtaining a Certificate of Inclusion issued as part of the agreement between the ODFW and the United States Fish and Wildlife Service (Service) titled "Programmatic Safe Harbor Agreement with Oregon Department of Fish and Wildlife and Private Property Owners for Voluntary Enhancement/Restoration Activities Benefiting Oregon chub in the Willamette Valley, Oregon" (the "Agreement").

The Agreement and this CA do not release the Cooperator from the responsibility to avoid "take" of any federally-listed animal species that already occupy portions of the property which is the subject of this CA.

This Cooperative Agreement includes:

(1) A map of the Enrolled Property;
(2) Identification of Oregon chub baseline on the property;
(3) Identification on map of proposed habitat improvements;
(4) Term of the Cooperative Agreement (10 year minimum); and
(5) Further detail of the landowner's (Cooperator's) and the ODFW's responsibilities under the Cooperative Agreement.

2. ENROLLED PROPERTY. The Cooperator owns property at **[tax map key information]** in the _____ recovery area, which is a suitable refugia site for establishing a new Oregon chub population **[or a suitable site for protecting, restoring or enhancing habitat for an existing natural population of Oregon chub].** The ODFW will enroll **[# acres]** of this property (the "[landowner's name] Property" or "Enrolled Properties") under the Agreement, as shown on the attached property map **(Tax map)**.

3. BASELINE CONDITIONS The baseline determination includes an assessment of the presence or absence of Oregon chub occupying the site prior to introduction or habitat enhancements. The baseline for the _____ Property is set at **[#]** Oregon chub.

Force majeure events such as hurricanes, rainstorms, floods, severe drought, fires, or insect/disease epidemics are beyond the reasonable control of the Cooperator, and could either

extirpate Oregon chub from enrolled lands or render Oregon chub habitat on enrolled lands unsuitable for continued occupation. These events may reduce Oregon chub numbers below original baseline conditions through no fault of or negligence of the Cooperator. The Service recognizes that baseline determinations and population levels may drop temporarily below baseline due to uncontrollable circumstances or stochastic events, even during normal environmental circumstances. In such circumstances the Cooperator, the ODFW, and the Service may agree to revise the Cooperative Agreement baseline conditions to reflect the new circumstances.

4. CONSERVATION MEASURES

4.1 Intended Outcome. The purpose of the Agreement and this CA is to increase the distribution and resiliency of the Oregon chub within its historic range by creating refugia populations, by improving the quantity and quality of habitat for existing natural populations, or by promoting natural movement and gene transfer among existing natural populations through the re-establishment of floodplain connectivity. This strategy decreases the risk of local extinction of Oregon chub through population dispersal and thus minimizes the probability that a single catastrophic event will simultaneously affect all populations. This strategy also recognizes the importance of habitat connectivity, which enables otherwise isolated populations to interbreed and increase their genetic variability and potential to evolve as environmental conditions dictate.

The biological goal of this Agreement is to aid in Oregon chub recovery by establishing new populations and genetic reserves at refugia sites and by improving the connectivity. Together, these activities should increase the distribution, number and natural movement of populations, and achieve recovered status. To accomplish this goal, it is essential that the Cooperator, the Service, and the ODFW work together to provide suitable habitat for Oregon chub. Management activities undertaken pursuant to this CA are intended to result in additional refugia sites for new populations or improved habitat for Oregon chub. The ODFW will prepare Cooperative Agreements and provide the following information:

The **[Name of Cooperator]** property is a **[# of acre(s)]** parcel **... [describe the property and management activities.]**

4.2. General Activities. The ODFW will coordinate a variety of management activities pursuant to the Agreement for Oregon chub. These management activities include the following: 1) translocating Oregon chub to the Enrolled Properties; 2) monitoring the status of translocated Oregon chub and carrying out additional translocations as needed; and 3) maintaining the Enrolled Properties or restoring habitat in a manner compatible with the management or restoration activities described in the Agreement.

4.3 Specific Activities on _____ Property. Management activities specific to the **[last name of Cooperator]** Property include the following:

List all of the restoration and management activities here.

Examples of management activities that landowners may undertake are:

Management

1) Divert the inflow from adjacent fields so they do not enter the pond habitat. This would reduce the chance of excess nutrients or chemicals from entering the pond.
2) Provide vegetative buffers to reduce sediment load into the pond
3) Fence the pond to exclude grazing livestock
4) Pump well water into the pond during drought conditions (if available) if water levels become dangerously low
5) Mechanically control invasive plants

Examples of restoration activities that landowners may undertake are:

Restoration

1) Plant native plants in and around the pond
2) Screen pond outlet to restrict movements of nonnative fishes
3) Remove nonnative fish prior to chub introduction (drain pond or pump dry)

As long as the Cooperator implements the above restoration and management activities and the baseline levels are maintained, the Cooperator may develop, farm, ranch, harvest timber, or make any other lawful use of the Enrolled Properties, even if loss of Oregon chub or occupied habitat above the established baseline levels occurs. The Cooperator, with the approval of the Service and the ODFW, may choose to maintain a future minimum population size of Oregon chub that exceeds a baseline condition greater than zero, at the Cooperator's discretion.

4.4 Other Management Activities. Nothing in this Agreement prevents the Cooperator from implementing land management activities not described in this CA, including improving habitat for Oregon chub, as long as (1) the Cooperator has consulted with the ODFW prior to implementation, and (2) such activities maintain the baseline conditions or enhance off-channel or floodplain habitat conditions, and do not adversely affect the beneficial actions set forth in this CA.

4.5 Emergency Actions. Emergency situations caused by anticipated natural disasters (e.g., hurricanes, fire, excessive rainfall, extreme drought, floods, insect infestations, or epidemic disease) may require Cooperator to initiate certain emergency actions that may result in take of Oregon chub. Prior to taking any such emergency actions, the Cooperator will notify the ODFW and make reasonable accommodations for survey and/or relocation of Oregon chub, possibly with the assistance of the Service. If prior notification is not reasonably possible, the Cooperator will take into account known locations of Oregon chub, and avoid impacts to the maximum extent possible during his/her emergency actions. The Cooperator will notify the Service and the ODFW within 10 working days of taking emergency actions, including the measures taken to avoid impacts to Oregon chub.

5. RESPONSIBILITIES OF THE PARTIES

The Cooperator and the ODFW agree to carry out certain responsibilities under this Cooperative Agreement. The Cooperator understands that in order to fulfill the responsibilities of the Safe Harbor Agreement, the ODFW must report to the Service all implementation and monitoring activities related to Oregon chub management in accordance with the Safe Harbor Agreement.

5.1 Cooperator:

5.1.1 Implement the restoration and management activities specified herein in compliance with all federal, state and local laws, including, but not limited to, physical delineation of the habitat area on the ground if and as deemed necessary by the ODFW or the Service. Cooperator will not proceed with any ground-disturbing habitat restoration activities until ODFW has obtained clearance from the Service that the project is in compliance with Section 6 of the National Historic Preservation Act. Archaeological investigations, surveys, excavations, or other associated activities may be required prior to starting ground-disturbing activities and should be considered during project planning.

5.1.2 Provide the Service and the ODFW with written notice six months (or, per Service approval, sufficient notice to move Oregon chub, if applicable) in advance of any planned activity that the ODFW or the Cooperator reasonably anticipates will result in "take" (i.e., death, injury, or other harm) of the Oregon chub, above the baseline conditions, on the _____ Property, and provide the Service the opportunity to capture and/or relocate any potentially affected species, if appropriate. For situations involving the potential for bodily injury, loss of life, or significant property damage, the Cooperator may incidentally take species without prior notice. However, the Cooperator will provide notice to the Service and the ODFW as soon as practicable before or immediately following those actions. Post-action notice will not exceed 10 days.

5.1.3 Upon reasonable notice (minimum of 48 hours, unless the Cooperator agrees to less notification time), allow access to the _____ Property by the Service, the ODFW, and their approved contractors, for purposes related to this Agreement, including, but not limited to, biological and compliance monitoring, technical assistance, baseline determinations, management actions, and capture and relocation of the Oregon chub.

5.1.4 Notify the Service and the ODFW of any transfer of ownership at least 60 calendar days prior to the intended transfer, so that the Service and/or the ODFW can attempt to contact the new owner, explain the baseline responsibilities applicable to the Enrolled Properties, and seek to interest the new owner in signing the existing Agreement or a new one to benefit listed species on the _____Property.

5.1.5 Report to the Service and the ODFW any dead, injured, or ill specimens of the Oregon chub observed on the _____ Property within ten days of the observation.

5.1.6 Assist the ODFW in compiling an annual report on activities on the _____ Property related to Oregon chub management and any activities that resulted in or may have resulted in incidental take of Oregon chub on the _____ Property.

5.1.7 Consider adaptive management recommendations that the ODFW may present to the Cooperator.

5.1.8 Seek technical assistance from the ODFW on appropriate action if considering implementing Oregon chub habitat restoration activities not specified herein.

5.2 The ODFW's responsibilities include the following:

5.2.1. Apply for and hold the Permit, subject to the terms of the Safe Harbor Agreement.

5.2.2 The ODFW will assist the Cooperator in ensuring that the management activities specified in this Cooperative Agreement to be implemented by the Cooperator comply with all relevant local, state, and federal regulations and statutes, and with the terms of the Agreement. As private landowners enroll in the Agreement and develop individual site-specific management plans, ODFW will not proceed with any ground-disturbing habitat restoration activities until ODFW has submitted a Request for Cultural Resource Compliance to the Service and obtained clearance from the Service that the project is in compliance with Section 6 of the National Historic Preservation Act.

5.2.3 Designate a Project Field Manager for the _____ Property.

5.2.4 Provide oversight of baseline condition assessment.

5.2.5 Provide technical assistance to the maximum extent practicable in implementing management activities.

5.2.6 Provide 48 hours advance notification to the Cooperator before any visit by the ODFW and/or Service staff to the _____ Property, unless Cooperator agrees to less notification time.

5.2.7 In situations where there is the potential for take in connection with activities on the property, consult with Cooperator and the Service to determine the number and status of Oregon chub present, and assess whether the Oregon chub above baseline conditions should remain on the Enrolled Properties or be relocated.

5.2.8 Monitor and report the implementation of approved management activities and terms of this Cooperative Agreement, as well as take authorized by the Permit

5.2.9 Report to the Service any dead, injured, or ill specimens of the Oregon chub observed on the _____ Property within ten days of the observation.

5.2.10 With assistance from the Cooperator provide annual reports due December 31 to the Service describing the current status of _____ Property, including: (i) an assessment of Oregon chub and their habitat, (ii) management actions implemented and outcomes if known, and (iii) descriptions of activities required by the CA and/or related to Oregon chub management and any activities that resulted in or may have resulted in incidental take of the Oregon chub.

6. AGREEMENT DURATION. Obligations under this Cooperative Agreement will be in effect for a minimum of 10 years from the date it is executed. Upon signing the Cooperative Agreement, a Certificate of Inclusion will be issued to the Cooperator under Permit **[permit reference number]**. The Certificate of Inclusion will authorize incidental take of Oregon chub from **[date]** to **[date]**, above a determined baseline condition, within the remaining duration of the 30-year term of the Permit at the time the Certificate of Inclusion is issued. Copies of the Cooperative Agreement and Certificate of Inclusion will be held by the ODFW and those completed within the annual reporting cycle will be submitted to the Service attached to the annual reports.

7. INCIDENTAL TAKE.

7.1 Definition. Take is defined as actions or attempted actions to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect such species. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns including, but not limited to, breeding, feeding or sheltering. Incidental take is any take of federally-listed wildlife or State-listed wildlife and plants that is incidental to, but not the purpose of, otherwise lawful activities. Oregon chub, or any specimen thereof, may not be captured, collected, or otherwise directly "taken" as this form of take is not considered to be incidental to other activities.

7.2 Allowed Land Uses. The Cooperator is authorized to make use of their Enrolled Properties in any lawful manner that does not result in reducing the population and/or occupied habitat of Oregon chub below the established baseline conditions or a negotiated minimum population size. Under the terms and 10-year period of this Cooperative Agreement, the Cooperator agrees to avoid the following land use activities on the Enrolled Property: grazing of livestock, stocking of fish, introduction of potentially harmful non-native species (e.g. invasive plants, pets such as non-native amphibians or turtles, etc.), logging trees, removal of surrounding vegetation, use of herbicide or pesticide, and earthmoving activities within 100 feet of the pond. After the 10 year period is over, these activities will be covered by the permit authorizing incidental take of Oregon chub. After the 10-year Agreement period has ended, the Cooperator will notify the Service of intent to engage in any of the above activities, in writing, at least six months in advance.

The Cooperator will consult the Service prior to conducting any of the above activities, with the exception of herbicide or pesticide application. In the case of herbicide or pesticide application,

the Cooperator will consult with the Service prior to application in the vicinity of the Enrolled Properties. All chemical applications will be according to label specifications and will be non-persistent. The Service may decide to remove the fish from _____ Property, depending upon the herbicide or pesticide utilized. The Cooperator will provide the Service with notice, in writing, six months in advance of any planned legal introductions of fish or amphibians to give the Service and the ODFW the opportunity to translocate Oregon chub from the site.

The Incidental Take permit will be valid for 30 years and the Incidental Take permit can be renewed upon consent of all parties or can be transferred to a new landowner providing they agree to the terms and conditions of this SHA.

8. FUNDING. Funding for management activities undertaken by the Cooperator will be the responsibility of the Cooperator. The ODFW and/or the Service will inform the Cooperator of potential funding opportunities through State or Federal grant programs that may be relevant. Cooperator shall not be responsible for funding management activities undertaken by the ODFW and/or the Service.

9. MODIFICATION OF COOPERATIVE AGREEMENT. The ODFW or the Cooperator may propose modifications or amendments to this Cooperative Agreement by providing written notice to the other party and obtaining their written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results, and a copy shall be provided to the Service for comment. The parties will make their best efforts to respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon the parties' written concurrence.

10. TERMINATION OF THE COOPERATIVE AGREEMENT..

10.1. As provided for in section 12 of the Service's Safe Harbor Policy (64 FR 32717), the Cooperator may, upon 60 days prior written notice to the ODFW and the Service, terminate this CA prior to the expiration date for circumstances beyond the Cooperator's control provided that the baseline conditions have been maintained and the Service is provided an opportunity to relocate the Oregon chub during the 60 day period after the notice is received. Upon termination, the Cooperator must relinquish the CI to the ODFW, and Oregon chub management on the Cooperator's lands will terminate. Such termination will not affect the Cooperator's authorization under the Permit to take any individual Oregon chub or occupied habitat that is not part of the Cooperator's baseline at the time of termination.

10.2 The Cooperator also may terminate this CA upon 60 days prior written notice for any other reason, but termination for reasons other than circumstances beyond the control of the Cooperator shall extinguish the Cooperator's authority to take species or occupied habitat under the CI and Permit, and the status of Oregon chub on the _____ Property will be determined as of the termination date of the CA for purposes of compliance with the Endangered Species Act.

11. CERTIFICATE OF INCLUSION SUSPENSION OR REVOCATION. The ODFW or the Service may suspend or revoke a Cooperator's Certificate of Inclusion if Cooperator breaches the obligations under the CA and fails to cure the breach in a timely manner, and the effect of the breach is to materially diminish the likelihood that the Cooperative Agreement will achieve its goals.

12. SUCCESSION AND TRANSFER This CA shall be binding on and shall inure to the benefit of the parties (including officers, directors, employees, lessees and agents thereof) and their respective successors and transferees, in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under this CA are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25, upon consent of the successor or transferee of the land, execution of a new CA, and issuance of a CI. A new owner(s) will have the same rights and obligations with respect to the Enrolled Properties as the original owner.

13. MUTUAL RELEASE. The ODFW and Cooperator hereby release and shall hold each other harmless from any liability arising from or related to this CA or activities undertaken on the _____ Property pursuant to this CA.

14. NOTIFICATION. Communication and correspondence required by this Cooperative Agreement should be directed to the addresses below. Names and addresses may be changed upon written notice to all parties.

Oregon Department of Fish and Wildlife
Native Fish Investigations Project
28655 Highway 34
Corvallis, Oregon 97333
(541) 757-4263

Dated effective as of the last date of signature below.

OREGON DEPARTMENT OF FISH AND WILDLIFE

By _____
Title_____
Date_____

COOPERATOR:

_____
Date_____

Appendix E. Safe Harbor Agreement Landowner Certificate of Inclusion Template

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [**(description of portion of property covered by the Safe Harbor permit)**] owned by [**Cooperator's name**], is included within the scope of Permit No. [**(permit number)**], issued by the U.S. Fish and Wildlife Service to [**(permittee)**], on [**(date)**], and expiring on [**(date)**] under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such Permit authorizes certain activities by participating landowners (Cooperators) as part of a Safe Harbor program to provide refugia habitat for Oregon chub or otherwise restore natural habitat occupied by the species. Pursuant to that Permit and this Certificate of Inclusion, the holder of this Certificate is authorized to engage in any otherwise lawful activity on the above described property that may result in the incidental taking of Oregon chub, as appropriate, subject to the terms and conditions of such Permit and the terms and conditions of the Safe Harbor Agreement entered into pursuant thereto by Oregon Department of Fish and Wildlife, and the Service on [(date)], that becomes binding upon [**Cooperator's name**], on the date and signature herein.

_____ _____

Name of Permittee Date

_____ _____

Participating Landowner Date