

**TEMPLATE SAFE HARBOR AGREEMENT  
For The  
COLUMBIA BASIN PYGMY RABBIT**

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Joint document produced by:  
U.S. Fish and Wildlife Service and Washington Department of Fish and Wildlife

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**Table of Contents**

<b>1.0</b>	<b>Introduction.....</b>	<b>1</b>
<b>2.0</b>	<b>Authority and Purpose .....</b>	<b>4</b>
<b>3.0</b>	<b>Goals and Objectives .....</b>	<b>4</b>
<b>4.0</b>	<b>Net Conservation Benefits.....</b>	<b>5</b>
<b>5.0</b>	<b>Species Background .....</b>	<b>5</b>
<b>6.0</b>	<b>Relationship to Other Conservation Strategies .....</b>	<b>7</b>
<b>7.0</b>	<b>Implementation of Agreement.....</b>	<b>8</b>
7.1	Enrollment Process .....	9
7.2	Content of Site Plans .....	10
7.3	Required Conservation Measures.....	11
7.3.1	Intervening Properties.....	11
7.3.2	Recovery Emphasis Areas .....	12
<b>8.0</b>	<b>Baseline .....</b>	<b>12</b>
8.1	Determining Baseline Conditions.....	13
8.1.1	Intervening Properties.....	13
8.1.2	Recovery Emphasis Areas .....	14
8.2	Baseline Adjustment.....	15
<b>9.0</b>	<b>Assurances to Participants.....</b>	<b>15</b>
<b>10.0</b>	<b>Service and WDFW Responsibilities.....</b>	<b>16</b>
10.1	Joint Responsibilities .....	16
10.2	Service Responsibilities.....	17
10.2.1	Service Monitoring and Reporting .....	18
10.3	WDFW Responsibilities .....	18
10.3.1	WDFW Monitoring and Reporting.....	19
<b>11.0</b>	<b>Management of Agreement.....</b>	<b>20</b>
11.1	Modification and Amendment of Agreement .....	20
11.2	Renewal of Agreement .....	21
11.3	Termination of Agreement .....	21
<b>12.0</b>	<b>Responsibilities of Participants.....</b>	<b>21</b>
<b>13.0</b>	<b>Neighboring Landowners and Managers .....</b>	<b>23</b>
<b>14.0</b>	<b>Dispute Resolution .....</b>	<b>24</b>
<b>15.0</b>	<b>Availability of Funds.....</b>	<b>24</b>
<b>16.0</b>	<b>Remedies .....</b>	<b>24</b>

**17.0 Third-Party Beneficiaries..... 24**  
**18.0 Relationship to Authorities ..... 24**  
**19.0 Other Federally Listed Species..... 25**  
**20.0 Additional Management Measures ..... 25**  
**21.0 Contacts, Notices, and Reports..... 25**  
**22.0 Authorizing Signatures..... 27**  
**23.0 Glossary..... 28**  
**24.0 Literature Cited ..... 30**

**Appendix A – Federal Fish and Wildlife Permit Application Form**  
**Appendix B – Example Site Plan**

## 1.0 Introduction

This Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit (Agreement) is between the U.S. Fish and Wildlife Service (Service), Washington Department of Fish and Wildlife (WDFW), and non-Federal / non-WDFW land owners and managers (Participants) who elect to enroll their property under the Agreement through individual “Site Plans”.

This Agreement provides a process for Participants to voluntarily contribute to State and Federal recovery efforts for the Columbia Basin pygmy rabbit without incurring additional regulatory burdens for “incidental take”. In exchange for implementing “conservation measures” that would be expected to benefit the Columbia Basin pygmy rabbit, Participants will be provided with “regulatory assurances” that they will not be subject to future land-use restrictions or additional management requirements if their voluntary actions result in increased numbers or distribution of the species on their enrolled property.

This Agreement is a template in that it establishes general guidelines and identifies minimum management responsibilities for non-Federal / non-WDFW land owners and managers to participate in the Agreement. In addition, this Agreement documents background biological information on the Columbia Basin pygmy rabbit, ongoing conservation actions and Federal recovery objectives for the species, “net conservation benefits” expected from implementation of the Agreement, and the types of land use activities and eligible properties covered by the Agreement. Once this Agreement is signed, the documentation needs and approval process to enroll Participants will be significantly streamlined as they will be able to reference the information and completed administrative measures encompassed by this Agreement.

This Agreement clarifies management responsibilities and expectations of the Service, WDFW, and prospective Participants, and will serve as the basis for the Service to issue Federal enhancement of survival permits (Permits) to Participants pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). To receive a Permit, each prospective Participant will need to complete and submit to the Service a Federal Fish and Wildlife Permit Application Form (Appendix A). Once issued, Permits will authorize incidental take of Columbia Basin pygmy rabbits that are above the “baseline” conditions of their enrolled property (see section 8).

In addition to submitting a Permit application, each prospective Participant to this Agreement will also need to develop a Site Plan that identifies the specific properties to be enrolled and documents the baseline conditions, existing and, as available, proposed future land-use activities, and agreed-upon conservation measures that would be expected to benefit the Columbia Basin pygmy rabbit on the enrolled properties (see sections 7.2 and 7.3). An example Site Plan is provided in Appendix B. Each prospective Participant and the Service will need to agree upon and sign a completed Site Plan, which will become a legally binding document at the time of Permit issuance to the Participant. Each Site Plan will remain within the scope of, and tier to, this Agreement.

Definitions of key terms referenced within this Agreement are provided in the glossary (see section 23). This Agreement follows the Service’s Safe Harbor Agreement regulations (64 FR

32706) and policy (64 FR 32717), both of which are implemented pursuant to the Act.

**Duration of Agreement, Site Plans, and Permits:** The duration of this Agreement is twenty (20) years (October 23, 2026). The duration of associated Site Plans and Permits will not exceed the duration of this Agreement.

**Covered Species:** The Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*), federally listed as endangered under the Act, is considered the “covered species” for purposes of this Agreement. Captive-bred, “intercross” pygmy rabbits that have some minor level of non-Columbia Basin pygmy rabbit ancestry (i.e.,  $\leq 25\%$ ) are considered essential for Columbia Basin pygmy rabbit recovery efforts (USFWS 2006). Any such intercross pygmy rabbits that are released within the Columbia Basin, as well as their naturally reproduced progeny, are considered Columbia Basin pygmy rabbits with respect to the Act and are included within the incidental take authority that is sought under this Agreement and associated Site Plans and Permits.

**Covered Area:** All non-Federal / non-WDFW properties within the historic distribution of the Columbia Basin pygmy rabbit that could be voluntarily managed to provide a net conservation benefit to the population are eligible for enrollment under this Agreement, including lands that have been applied for or are currently enrolled under various programs administered by the U.S. Department of Agriculture (e.g., Conservation Reserve Program). The overall area covered by this Agreement includes portions of six counties in central Washington and totals approximately 2,650,000 acres. However, eligible properties will primarily include those that represent shrub steppe habitat and/or soil conditions that may be capable of supporting the species, either currently or in the foreseeable future. These potentially occupied areas and adjacent properties that may receive intermittent use by Columbia Basin pygmy rabbits, such as for exploratory behavior or dispersal between suitable habitats, total approximately 750,000 acres (Figure 1).

Implementation of this Agreement will also be conducted on a priority-driven basis, with emphasis being given to non-Federal / non-WDFW land owners and managers of “recovery emphasis areas” (see section 6), those within five miles of a recovery emphasis area (Figure 1), and those whose properties may currently harbor Columbia Basin pygmy rabbits. These properties, which total approximately 160,000 acres, represent the extent of the overall covered area that could be directly affected by implementation of this Agreement and issuance of Permits over the near-term (up to 10 years). As the Service’s and WDFW’s respective workloads and resources allow, and as near-term recovery objectives are accomplished, other prospective Participants within the historic distribution of the Columbia Basin pygmy rabbit will be addressed. The specific properties being considered for enrollment under this Agreement will be detailed in the Site Plans of prospective Participants.

Lands under the jurisdiction of WDFW are subject to the management responsibilities and regulatory authority prescribed by section 6 of the Act and, therefore, are not considered for enrollment under this Agreement. Public lands under the jurisdiction of other State agencies (e.g., Washington Department of Natural Resources) may be enrolled under this Agreement.

**Covered Activities:** All existing and, as available, proposed future land-use activities of

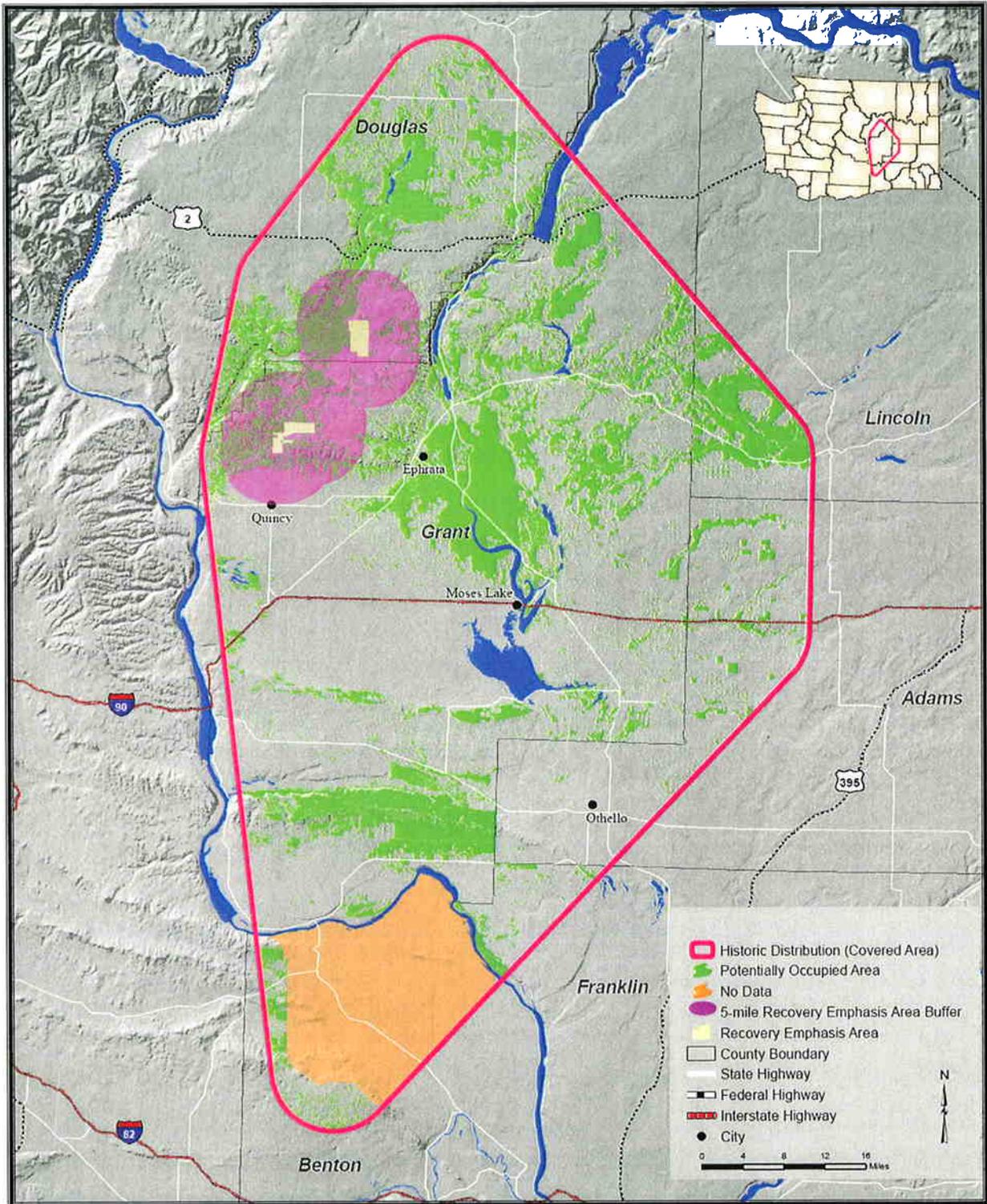


Figure 1. Overall area covered by Agreement, potentially occupied habitat / soil conditions, and recovery emphasis areas (see text).

Participants that may result in the incidental take of Columbia Basin pygmy rabbits that are above the baseline conditions of their enrolled properties are covered by this Agreement. These activities may include, but are not limited to, those associated with ranching, farming, recreation, residential upkeep, conservation programs for the covered species, and direct management of shrub steppe habitat, including maintenance, enhancement, restoration, and conversion. The specific land-use activities of prospective Participants to this Agreement will be detailed in their Permit applications and Site Plans.

The only “take” that will be authorized by this Agreement and the associated Site Plans and Permits is take of Columbia Basin pygmy rabbits or identified habitat, as appropriate (see section 8), that is above the baseline conditions of enrolled properties and that is incidental to otherwise lawful activities. It is important to note that any such take may or may not ever occur. In addition, it is unlikely that the Columbia Basin pygmy rabbit would fully benefit from management of the properties covered by this Agreement except for the voluntary involvement of Participants.

## **2.0 Authority and Purpose**

This Agreement was developed to address both the conservation needs of the Columbia Basin pygmy rabbit and the interests of non-Federal / non-WDFW land owners and managers in the State of Washington.

**Authority:** Sections 2, 6, 7, and 10 of the Act allow the Service to enter into this Agreement. Section 2 states that encouraging interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation’s heritage in fish, wildlife, and plants. Section 6 authorizes development and implementation of Cooperative Agreements with the States to help conserve threatened and endangered species in furtherance of the purposes of the Act. Section 7 requires the Service to review programs that it administers and to utilize such programs to conserve the Nation’s fish and wildlife resources in furtherance of the purposes of the Act. Lastly, section 10 authorizes the Service to issue enhancement of survival permits for species listed pursuant to the Act.

**Purpose:** The purpose of this Agreement is to facilitate collaboration between the Service, WDFW, and prospective Participants to implement voluntary conservation measures to benefit the Columbia Basin pygmy rabbit. Through completed Site Plans and issuance of Permits, willing land owners and managers will become Participants to this Agreement. In exchange for their contributions, Participants will be provided with regulatory assurances and will be authorized to cause incidental take of Columbia Basin pygmy rabbits that are above the baseline conditions of their enrolled properties.

## **3.0 Goals and Objectives**

This Agreement has the following goals:

1. To provide net conservation benefits to the Columbia Basin pygmy rabbit.
2. To provide regulatory assurances to participating land owners and managers.

This Agreement has the following objectives:

1. To encourage land owners and managers to undertake voluntary conservation measures to benefit the Columbia Basin pygmy rabbit.
2. To maintain or increase the amount of habitat available to the Columbia Basin pygmy rabbit within their historic distribution.
3. To accomplish the foregoing without negatively affecting existing and proposed future land-use activities by reducing Participants' future management liability for incidental take of Columbia Basin pygmy rabbits on their enrolled property.
4. To increase public support for Columbia Basin pygmy rabbit conservation efforts by implementing proactive, cooperative, and flexible management in accordance with the measures prescribed by the Act.

#### **4.0 Net Conservation Benefits**

The net conservation benefits to the Columbia Basin pygmy rabbit that are expected to result from implementation of this Agreement and the associated Site Plans and Permits include:

1. Appropriate habitats will be maintained on enrolled properties and be available for use by Columbia Basin pygmy rabbits released to recovery emphasis areas.
2. Habitats on enrolled properties will facilitate dispersal of newly released Columbia Basin pygmy rabbits and enhance connectivity of recovery emphasis areas.
3. New subpopulations of Columbia Basin pygmy rabbits may form on enrolled properties through natural population expansion.
4. Additional wild Columbia Basin pygmy rabbits may be located on properties being considered for enrollment and be secured for captive breeding and/or translocation efforts, which will improve the overall recovery outlook for the population.
5. Monitoring and future collection of biological information concerning the Columbia Basin pygmy rabbit (e.g., dispersal, survival, productivity) will be improved through cooperative management efforts on enrolled properties.
6. Research and "adaptive management" for the Columbia Basin pygmy rabbit can be made more comprehensive if implemented at a broader scale through facilitated access to enrolled properties.
7. Successful implementation of cooperative, voluntary conservation measures will increase public awareness and support for Columbia Basin pygmy rabbit recovery efforts.

It is likely that most Participants to this Agreement will provide more than one of the net conservation benefits listed above. The minimum conservation measures that will need to be implemented by Participants to achieve net conservation benefit(s) are generally identified in section 7.3. The specific, agreed-upon conservation measures to be undertaken by Participants will be detailed in their respective Site Plans.

#### **5.0 Species Background**

More complete biological information and references for the following discussions may be found in other Service documents (USFWS 2004, USFWS 2006).

**Description:** The pygmy rabbit (*Brachylagus idahoensis*) is the smallest rabbit species in North

America, with mean adult weights ranging from 0.8 to 1.1 pounds and lengths from 9 to 12 inches. The pygmy rabbit is most similar in appearance to cottontail rabbits (*Sylvilagus* spp.), but is distinguishable from other rabbit species by its small size, short ears, small hind legs, and lack of white on the tail. There are no recognized subspecies of the pygmy rabbit. The Service recognizes pygmy rabbits within the Columbia Basin (see Historic and Present Distribution, below) as a distinct population segment pursuant to the Act.

**Habitat Use:** Pygmy rabbits are typically found in areas that include tall, dense stands of sagebrush (*Artemisia* spp.), and are highly dependent on sagebrush to provide both food and shelter throughout the year. The pygmy rabbit is one of only two rabbit species in North America that digs its own burrows, which are typically found in deep, loose soils. However, pygmy rabbits occasionally make use of burrows abandoned by other species and, as a result, may occur in areas of shallower or more compact soils that support sufficient shrub cover.

**Breeding Behavior:** Pygmy rabbits begin breeding their second year of life and, in Washington, breeding may occur from February through July. In some parts of their distribution, female pygmy rabbits may have up to three litters per year and average six young per litter. Recent information on captive and wild pygmy rabbits indicates that pregnant females excavate cryptic, relatively shallow burrows, known as natal burrows, in the vicinity of their regular burrows, which are used to give birth in and for nursing and early rearing of their litters.

**Home Range and Movements:** Pygmy rabbits have relatively small home ranges during winter and remain within several hundred feet of their burrows. They have larger home ranges during other seasons and, for male pygmy rabbits in Washington, these areas may cover up to roughly 50 acres. Recent records from studies in Idaho indicate that pygmy rabbits may make abrupt movements of over 7 miles between their smaller, seasonal use sites. While these movements are considerably longer than those previously documented, these are maximum estimates and there are large differences in the propensity of individual pygmy rabbits to disperse, with most remaining relatively sedentary.

**Survival:** The annual survival rate of adult pygmy rabbits may be as low as 12%. However, the mortality rates of adult and juvenile pygmy rabbits can vary considerably between years, and even between juvenile cohorts within years. Predation has been shown to be the main cause of pygmy rabbit mortality, with potential predators including badgers (*Taxidea taxus*), long-tailed weasels (*Mustela frenata*), coyotes (*Canis latrans*), bobcats (*Felis rufus*), great horned owls (*Bubo virginianus*), long-eared owls (*Asio otus*), ferruginous hawks (*Buteo regalis*), northern harriers (*Circus cyaneus*), and common ravens (*Corvus corax*).

**Historic and Present Distribution:** The historic distribution of the pygmy rabbit included portions of Montana, Idaho, Wyoming, Utah, Nevada, California, Oregon, and Washington. The pygmy rabbit has been present within the Columbia Basin ecosystem, a geographic area that extends from northern Oregon through eastern Washington, for over 100,000 years. This population segment, referred to as the Columbia Basin pygmy rabbit and which is the subject of this Agreement, is believed to have been disjunct from the remainder of the species' range for at least 10,000 years, as suggested by the fossil record and population genetic analyses.

Museum specimens and sighting records indicate that the Columbia Basin pygmy rabbit may have occurred in portions of six Washington counties during the first half of the 1900s, including Douglas, Grant, Lincoln, Adams, Franklin, and Benton (Figure 1). With the exception of a single record from Benton County in 1979, Columbia Basin pygmy rabbits have only been found in southern Douglas and northern Grant Counties since 1956. The distribution and abundance of Columbia Basin pygmy rabbits in Washington has declined dramatically since the mid-1990s. Surveys of the last known occupied site, located in southern Douglas County, have not detected any animals since mid-2004, indicating that the population may now be extirpated from the wild.

**Threats Summary:** Large-scale habitat loss and fragmentation likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit. However, it is unlikely that these factors directly influenced the declines noted since the mid-1990s and the eventual extirpation of all known subpopulations in the wild. Once a population declines below a certain threshold, it is at risk of extirpation from a number of influences including chance environmental events (e.g., extreme weather), catastrophic habitat or resource failure (e.g., due to fire or insect infestations), predation, disease, demographic limitations, and loss of genetic diversity. To some extent, all of these influences have likely impacted the Columbia Basin pygmy rabbit and, in combination, have led to the population's current status.

**State and Federal Status:** The Washington Wildlife Commission designated the pygmy rabbit as a State threatened species in 1990, and reclassified it as endangered in 1993 (WDFW 1995). The Service emergency-listed the Columbia Basin pygmy rabbit as endangered under the Act in 2001 (66 FR 59734), and fully listed the population as endangered in 2003, without critical habitat (68 FR 10388).

## **6.0 Relationship to Other Conservation Strategies**

**Past Efforts:** WDFW has undertaken a variety of conservation actions to help conserve the Columbia Basin pygmy rabbit since 1979. WDFW also published the Washington State Recovery Plan for the Pygmy Rabbit in 1995 (WDFW 1995), and plan addenda in 2001 (WDFW 2001) and 2003 (WDFW 2003). State conservation efforts have included population surveys, habitat inventory, land acquisition, habitat restoration, land management agreements, initial studies on the effects of livestock grazing, and predator control. Despite these efforts, in 2001 WDFW concluded that attempting to manage the remaining Columbia Basin pygmy rabbits in the wild would encumber the population with extreme risk due to the array of threats it faced. To address this risk, WDFW determined that intervention, by way of a captive breeding program, was necessary to prevent the extinction of the Columbia Basin pygmy rabbit.

**Federal Recovery Planning:** The Service assembled a multi-party Recovery Team in 2003. The team's main objective is to assist the Service with development of a Federal Recovery Plan for the Columbia Basin Pygmy Rabbit (Recovery Plan). Currently, a Draft Recovery Plan describes management actions needed to initiate recovery of the Columbia Basin pygmy rabbit and provides the necessary framework and projected time lines to accomplish those actions (USFWS 2006). To the extent possible (see following), the Draft Recovery Plan also identifies specific criteria that must be met to achieve Federal recovery objectives.

There are currently a number of significant information gaps in our knowledge about pygmy rabbits in general and, more specifically, about how the Columbia Basin population will respond to ongoing and developing conservation strategies. The available information does not currently allow for a long-term Recovery Plan to be developed or specific criteria to be defined that, when met, could ensure the population's full recovery. Therefore, the Recovery Team has adopted a phased approach for recovery planning (i.e., 10-year increments). A phased approach will allow for formulation and implementation of appropriate adaptive management as the information base concerning the Columbia Basin pygmy rabbit improves. An adaptive management strategy, near-term recovery objectives (i.e., 2006 - 2015), and a range of criteria that would be necessary to federally down-list the population from endangered to threatened status are currently identified in the Draft Recovery Plan.

A key, near-term recovery objective identified in the Draft Recovery Plan is to reintroduce captive-bred Columbia Basin pygmy rabbits to suitable sites within their historic distribution to begin the process of reestablishing a viable wild population. Any such suitable site must be large enough and contain a sufficient quantity and quality of shrub-steppe habitat to support a subpopulation with a five-year average "effective population size" of at least 125 individuals. These sites, which are referred to as recovery emphasis areas, will be actively managed to help conserve the Columbia Basin pygmy rabbit in the wild and represent areas where long-term recovery criteria are to be attained. Recovery emphasis areas are managed, in whole or in part, by involved Federal agencies, WDFW, and certain willing Participants to this Agreement. Current conservation partners managing recovery emphasis areas in cooperation with the Service and WDFW include the Bureau of Land Management, The Nature Conservancy, and Mr. Peter Lancaster (USFWS 2006).

Intervening non-Federal / non-WDFW properties outside of recovery emphasis areas, while they may not be actively managed to conserve the Columbia Basin pygmy rabbit, may nevertheless contribute to recovery efforts. Any such property that could be voluntarily managed by a land owner or manager to provide a net conservation benefit to the population will be considered for inclusion under this Agreement. Potential benefits that could be realized on properties managed by Participants outside of recovery emphasis areas include any of those identified in section 4, above.

## **7.0 Implementation of Agreement**

Upon entering into this Agreement, the Service and WDFW will begin its implementation by working with prospective Participants to develop Permit applications and Site Plans that will define the baseline conditions of their property, existing and proposed future land-use activities, and agreed-upon conservation measures that would be undertaken on properties being considered for enrollment. Implementation of this Agreement will be conducted on a priority-driven basis, with emphasis being given to land owners and managers of recovery emphasis areas, those within five miles of a recovery emphasis area, and those whose properties may currently harbor Columbia Basin pygmy rabbits. As the Service's and WDFW's respective workloads and resources allow, other prospective Participants within the historic distribution of the Columbia Basin pygmy rabbit will be addressed.

As a prerequisite to including Participants under this Agreement, the Service must document that management of the properties being considered for enrollment would result in a net conservation benefit to the Columbia Basin pygmy rabbit. The Service will consider applications from any land owner or manager who is applying for a Permit to cover property that is currently, at least partially, shrub-steppe habitat, that is adjacent to such habitat, or any areas that may regenerate to such habitat, including lands that have been applied for or are currently enrolled under various programs administered by the U.S. Department of Agriculture (e.g., Conservation Reserve Program).

In order to include land owners and managers under this Agreement, each prospective Participant must submit to the Service a completed Permit application. In addition, each prospective Participant must develop a Site Plan, wherein they agree to implement specified conservation measures on the properties to be enrolled that would be expected to benefit the Columbia Basin pygmy rabbit (see section 7.3). Upon request, the Service and WDFW will provide technical assistance to prospective Participants to develop their Permit applications and Site Plans. Prospective Participants and the Service will need to sign final Site Plans, which will become legally binding documents at the time of Permit issuance.

By regulation, the Service must publish a notice in the Federal Register announcing that a Permit application has been received and provide a 30-day public comment period for interested parties to submit data, comments, or other information with respect to the application. Through coordination with each Participant, the Service will address any substantive comments received prior to making a final decision on Permit issuance. Upon completion of the Permit application review process, the Service will issue Permits to Participants and provide regulatory assurances to cover identified land-use activities on the enrolled properties consistent with their baseline conditions. The expiration date of Site Plans and Permits will be no later than the expiration date of this Agreement. Each Participant may sign up for a shorter period of time, as long as net conservation benefit(s) can be achieved over the duration of their Site Plan and Permit.

## 7.1 Enrollment Process

A land owner and/or manager wishing to enroll their property under this Agreement should consider the following steps:

1. The prospective Participant may contact the appropriate Service representative (see section 21) to discuss the terms of this Agreement, including minimum site-specific conservation measures that will be required (see section 7.3) and options for determining baseline conditions (see section 8). They may also contact the appropriate Service and/or WDFW representative to discuss options for conducting surveys and, as necessary, capture and translocation operations.
2. The prospective Participant should provide information necessary to complete their Permit application and Site Plan (see Appendix A and section 7.2, respectively). The Service and WDFW will provide technical assistance to prospective Participants to help develop the necessary information upon request.

3. The Service and WDFW will review draft Site Plans for consistency with the provisions and intent of this Agreement.
4. Each prospective Participant must sign the Site Plan for it to be valid.
5. Once the Permit application review process is completed and the Service determines that the permit application meets all statutory and regulatory requirements, and the Site Plan is signed, the Service will provide regulatory assurances and issue a Permit to the Participant that authorizes incidental take of Columbia Basin pygmy rabbits that are above the baseline conditions of the Participant's enrolled property.

## 7.2 Content of Site Plans

Each Site Plan will:

- a. Accurately identify the property to be enrolled under this Agreement by providing a legal description and map of property boundaries, listing total acreage, delineating existing habitat conditions, and documenting ownership, management, and lease authorities, as applicable.
- b. Document the baseline conditions for the covered species on the enrolled property and identify how the baseline conditions were determined (e.g., when and how surveys for the covered species and/or habitat assessments were conducted, whether the baseline was established in terms of previously-known information, or other factors).
- c. Describe the conservation measures that will be undertaken on the enrolled property to achieve the expected net conservation benefit(s) for the covered species.
- d. Identify the existing land-use activities that could result in incidental take of Columbia Basin pygmy rabbits on the enrolled property.
- e. As available, generally describe the expected future land-use activities that would be expected to return the enrolled property, in whole or in part, to baseline conditions (e.g., habitat conversions).
- f. Identify the term of the Site Plan and requested Permit (up to 20 years, but no longer than the duration of this Agreement).

Each Participant will be responsible for implementing the conservation measures that have been agreed to in their Site Plan, for complying with all other requirements identified in this Agreement (see Section 12), and for complying with any other terms and conditions identified in their Permit, as applicable. Each Participant will also be available by phone or to meet with appropriate representatives of the Service and/or WDFW, as-needed and through mutually agreeable arrangements, to discuss any matters related to this Agreement, their associated Site Plan and Permit, or other pertinent conservation efforts for the Columbia Basin pygmy rabbit.

## 7.3 Required Conservation Measures

The Federal recovery strategy for the Columbia Basin pygmy rabbit currently identifies two high priority recovery emphasis areas (USFWS 2006). Recovery emphasis areas represent sites that are to be actively managed to help conserve the Columbia Basin pygmy rabbit in the wild and where long term recovery objectives are to be attained. Recovery emphasis areas contain habitat characteristics that could currently, or potentially through appropriate enhancement measures, sustain a viable subpopulation of Columbia Basin pygmy rabbits. Intervening non-Federal / non-WDFW properties outside of recovery emphasis areas, while they may not be actively managed to conserve the Columbia Basin pygmy rabbit, may nevertheless contribute to recovery efforts.

Reflecting this broad recovery strategy, the collective management expectations of the Service and WDFW are different for intervening properties and for properties that comprise, in whole or in part, recovery emphasis areas. In order to accomplish the goals and objectives of this Agreement, the Service and WDFW agree that, at a minimum, Participants must implement all of the following conservation measures on intervening properties and recovery emphasis areas, respectively, in order to provide one or more net conservation benefit(s) to the Columbia Basin pygmy rabbit, either immediately or in the future (see section 4).

### 7.3.1 Intervening Properties

1. Provide the Service, WDFW, or a mutually agreeable third party access and opportunity to conduct surveys for Columbia Basin pygmy rabbits on properties being considered for enrollment to help establish baseline conditions (as identified in section 8.1.1).
2. Allow the Service and WDFW to capture and remove Columbia Basin pygmy rabbits from properties being considered for enrollment, as appropriate to help achieve recovery objectives. Any such capture and removal efforts would be coordinated with the prospective Participant (as identified in section 8.1.1).
3. Provide the Service and WDFW access to enrolled properties for the term of associated Permits, through a mutually-agreeable notification process, to monitor any Columbia Basin pygmy rabbits present.
4. Notify the Service at least thirty days prior to undertaking any habitat-altering activity that could result in authorized incidental take of Columbia Basin pygmy rabbits, and provide the Service and WDFW the opportunity to translocate any affected Columbia Basin pygmy rabbits to suitable alternate site(s) prior to implementation of those activities. Regardless of the minimum 30-day notice requirement, Participants may provide as much notification to the Service as possible. The Service and WDFW will undertake a coordinated and concerted effort to respond to that notice. However, should the Service and WDFW fail to respond within the 30-day time frame, the Participant may proceed with the proposed activity.
5. Immediately notify the Service upon finding any dead or accidentally killed Columbia Basin pygmy rabbits on enrolled property, or immediately contact an appropriate representative of

the Service or WDFW for assistance if identification of the specimen is uncertain.

### 7.3.2 Recovery Emphasis Areas

1. Provide the Service with detailed documentation of existing habitat conditions, or provide the Service and WDFW access and opportunity to conduct habitat assessments, in order to establish baseline conditions for properties being considered for enrollment (as identified in section 8.1.2).
2. Allow the Service and WDFW to establish enrolled property as a recovery emphasis area, or appropriate portion of a recovery emphasis area, with baseline conditions expressed as the amount and type(s) of habitat that would contribute to supporting a viable subpopulation of Columbia Basin pygmy rabbits.
3. Allow the Service and WDFW to release captive-bred and/or translocated Columbia Basin pygmy rabbits and to monitor any Columbia Basin pygmy rabbits present on enrolled properties.
4. Notify the Service at least thirty days prior to undertaking any habitat-altering activity that could result in authorized incidental take of Columbia Basin pygmy rabbits, and provide the Service and WDFW the opportunity to translocate any affected Columbia Basin pygmy rabbits to suitable alternate site(s) prior to implementation of those activities. Regardless of the minimum 30-day notice requirement, Participants may provide as much notification to the Service as possible. The Service and WDFW will undertake a coordinated and concerted effort to respond to that notice. However, should the Service and WDFW fail to respond within the 30-day time frame, the Participant may proceed with the proposed activity.
5. Immediately notify the Service upon finding any dead or accidentally killed Columbia Basin pygmy rabbits on enrolled property, or immediately contact an appropriate representative of the Service or WDFW for assistance if identification of the specimen is uncertain.

## 8.0 Baseline

Conceptually, baseline represents the number of Columbia Basin pygmy rabbits on a given property at the time it is enrolled under this Agreement, or as otherwise determined beforehand through baseline commitment letters issued by the Service (see below). However, for most species including pygmy rabbits, it is often difficult or impossible to determine the precise number of individuals in a given occupied area. Therefore, in practice, baseline is typically expressed as “population estimates and distribution” of the covered species or “habitat characteristics and determined area that sustain seasonal or permanent use” by the covered species on enrolled property.

Determining the number of active burrows present in a given area currently represents the most reliable way to estimate pygmy rabbit population abundance and distribution, and is the most efficient method for documenting the species’ overall presence or absence in an area (WDFW 2004). As such, the Service and WDFW anticipate that baseline conditions for intervening

properties will be established in terms of the number of active Columbia Basin pygmy rabbit burrows present.

A key feature of recovery emphasis areas related to their assessed ability to support long term recovery efforts for the Columbia Basin pygmy rabbit are the existing, or potential, habitat conditions they represent (USFWS 2006). As such, the Service and WDFW anticipate that baseline conditions for recovery emphasis areas will be established in terms of the amount and type(s) of habitat that currently exist, or that could exist through appropriate enhancement measures, on the properties that would contribute to supporting a viable subpopulation of Columbia Basin pygmy rabbits. At the discretion of land owners and managers of recovery emphasis areas and with concurrence of the Service and WDFW, these baseline conditions may apply whether or not any additional wild animals are documented on the properties in the future.

## 8.1 Determining Baseline Conditions

Under this Agreement, each Participant is responsible for deciding how and when their Columbia Basin pygmy rabbit baseline conditions are to be determined and what portions of their property are to be enrolled. However, the Service and each prospective Participant must concur with the baseline determination for the property being considered for enrollment prior to its inclusion under this Agreement. Upon request, the Service and WDFW will provide technical assistance to prospective Participants to help determine their baseline conditions.

### 8.1.1 Intervening Properties

The first step in determining baseline conditions of intervening properties being considered for enrollment is to determine if habitat that may be occupied by Columbia Basin pygmy rabbits is present. Any such habitat is referred to as “survey habitat” for purposes of this Agreement (see Glossary). If survey habitat is not present, and the Service and/or WDFW can confirm this through currently available information (e.g., past surveys, aerial photographs, satellite imagery) or other non-entry methods (e.g., “roadside” assessment), the baseline conditions for any such property will be zero. If inaccessible areas of non-survey habitat are present, they may be documented through cursory visual assessment by the Service, WDFW, or a mutually agreeable third party to confirm their baseline conditions are zero.

If any survey habitat is present, it may be surveyed by the Service, WDFW, or a mutually agreeable third party according to WDFW evidence search protocol (WDFW 2004). Accurate surveys are essential for determining baseline conditions of these areas. Any surveys conducted would be at the discretion of, and closely coordinated with, each prospective Participant.

If Columbia Basin pygmy rabbits are found on intervening properties during surveys, the intent would be to capture and remove them so that they can be included in the captive breeding program and/or translocated to a recovery emphasis area (up to the current limit of 30, as identified in USFWS 2006). Any such capture and removal efforts would be coordinated with the prospective Participant. Any Columbia Basin pygmy rabbits that are found during surveys and subsequently removed will not be counted toward the Participant’s baseline conditions (i.e., the estimated number of active burrows present will be adjusted accordingly). With a

prospective Participant's permission, capture operations would be carried out by qualified personnel under WDFW's existing Federal Recovery Permit (TE050644-3).

Individual surveys for Columbia Basin pygmy rabbits on intervening properties would be limited to a maximum of 640 acres of survey habitat and would be conducted by section or, depending on ownership and habitat patterns, the appropriate portions of one or more sections. There are several advantages to limiting the size of the area that would be surveyed at any one time in this way. First, it is a reasonably sized area to manage given the workload that will be required for surveying and the number of field personnel that are likely to be available for survey efforts. Second, an area of this size is not likely to encompass multiple patches of occupied habitat, which could make simultaneous survey, capture, and monitoring efforts difficult. Third, it is unlikely that an area of this size currently supports more animals than would be desirable to remove for the captive breeding program and/or translocation efforts and, therefore, all of the Columbia Basin pygmy rabbits that may be present could be captured and removed prior to undertaking additional survey work. Fourth, for most land owners and managers with large and/or multiple holdings, this will result in a relatively small portion of the property being disrupted by surveys at any one time. Finally, if a land owner or manager is dissatisfied with the survey procedures, survey results, capture operations, or any other aspect of the work, surveys on their property being considered for enrollment can be suspended to address the concerns or discontinued altogether prior to making commitments to, or expending effort on, additional property holdings.

Considering past survey efforts and known declines in the Columbia Basin pygmy rabbit population, the Service and WDFW anticipate that it is unlikely any additional wild animals will be located during future surveys. However, if Columbia Basin pygmy rabbits are located during surveys, prospective Participants will be notified immediately and have the following options available: a) continued management of the Columbia Basin pygmy rabbits present on properties being considered for enrollment with a corresponding baseline determination; or b) additional wild animals may be removed for inclusion in the captive breeding program and/or translocated to a recovery emphasis area, up to the current limit of 30 and as appropriate based on Federal recovery objectives (USFWS 2006).

Upon completion of any surveys and, as applicable, capture operations, the Service will provide a baseline description letter to the prospective Participant. This baseline will apply to the property until it can be enrolled under this Agreement through a signed Site Plan and issuance of a Permit, as appropriate.

### 8.1.2 Recovery Emphasis Areas

Baseline determinations for land owners and managers of recovery emphasis areas will require more detailed documentation and/or follow-up field assessments to evaluate existing habitat conditions. Therefore, information needed to establish baseline conditions for these properties will be addressed on a case-by-case basis and documented within each prospective Participant's Site Plan. The Service will discuss with each prospective Participant general criteria for existing habitat documentation or, as necessary, will provide guidance and assistance for conducting follow-up habitat assessments for baseline determinations at recovery emphasis areas.

Upon submission of sufficient documentation or completion of future habitat assessments, the Service will provide a baseline description letter to the prospective Participant. This baseline will apply to the property until it can be enrolled under this Agreement through a signed Site Plan and issuance of a Permit, as appropriate.

## 8.2 Baseline Adjustment

In spite of proactive conservation measures, there may be circumstances, through no fault of a Participant, where the baseline conditions on their enrolled property can not be maintained. In such instances, the Participant **will not** be held accountable for losses incurred on the enrolled property provided each of the following are met:

1. Loss of the baseline occurred through no fault of the Participant and in spite of full compliance with this Agreement and their associated Site Plan and Permit.
2. The Participant must request a baseline reduction from the Service and, as the Service deems necessary, must allow the Service to conduct an investigation on the enrolled property.

A Participant's baseline conditions can be reduced if both of the above requirements are met (and assuming the existing baseline for an intervening property is not already zero). If the Service determines that the property is eligible for a reduction in baseline conditions, the Participant's Site Plan will be modified to reflect the change.

## 9.0 Assurances to Participants

Upon completion of individual Site Plans and issuance of associated Permits, the Service will provide Participants to this Agreement with the following regulatory assurances (codified at 50 CFR §17.22 and §17.32, as applicable):

The Service and Participant may agree to revise or modify the conservation measures set forth in the Participant's Site Plan if the Service determines that such revisions or modifications do not change the Service's prior determination that the measures are reasonably expected to provide a net conservation benefit to the covered species. However, the Service may not require additional or different conservation measures to be undertaken by a Participant without their consent.

The above assurances allow Participants to develop or make any other lawful use of their enrolled property, even if such activity results in the incidental take of Columbia Basin pygmy rabbits to such an extent that the enrolled property returns to the agreed-upon baseline conditions. These assurances apply to the entire enrolled property, or as otherwise specified in each Site Plan (such as for phased conservation measures). In addition, these assurances apply only with respect to the Columbia Basin pygmy rabbit. Finally, these assurances are contingent on the Participant having maintained the agreed-upon baseline conditions, only engaging in take that is incidental to otherwise lawful activities, and being in full compliance with this Agreement and their associated Site Plan and Permit.

## **10.0 Service and WDFW Responsibilities**

### **10.1 Joint Responsibilities**

The Service and WDFW will meet as needed, but at least annually by December 31<sup>st</sup>, to review information contained in monitoring reports, assess adaptive management measures, including results of any past measures implemented and planning needs for future measures, and to discuss any matters related to this Agreement and the associated Site Plans and Permits. These meetings will provide an opportunity to identify and resolve any concerns or disputes regarding implementation of this Agreement, and to discuss necessary amendments or modifications to the Agreement. The Service and WDFW will mutually agree on the date, time, and location for these meetings and on a list of potential attendees, to include notifications to Participants, and discussion topics, to include any other pertinent topics than currently identified in this section.

The Service and WDFW, at their individual discretion and with a Participant's permission, can provide technical, financial, and other assistance to the Participant in order to facilitate implementation of the conservation measures addressed by their Site Plan, or that otherwise facilitate the provisions and intent of this Agreement. Moreover, nothing in this Agreement will limit the joint or respective abilities of the Service and WDFW to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

As specified below, the Service will contact Participants as needed, but at least annually and prior to the joint annual meeting of the Service and WDFW discussed above, to assess implementation of the agreed-upon conservation measures and compliance with other responsibilities prescribed by this Agreement and the associated Site Plans and Permits. The Service and WDFW will be available to meet with Participants at their request, and through mutually agreeable arrangements, to discuss their concerns regarding this Agreement, their associated Site Plans, or the terms and conditions of their Permits. Pursuant to the regulatory assurances provided (see section 9), the Service and WDFW will also be available to discuss with Participants any other pertinent topics concerning conservation practices or other adaptive management objectives being considered for the Columbia Basin pygmy rabbit.

The Service, WDFW, and/or their respective representatives will coordinate with Participants, through a mutually agreeable notification process, prior to entering their enrolled property for the purposes of ascertaining the status of baseline conditions and for monitoring, capturing, translocating, or conducting any future research or adaptive management actions, as applicable, for Columbia Basin pygmy rabbits.

The Service and WDFW will undertake efforts to increase public awareness of this Agreement through a combination of public meetings, workshops, press releases, direct consultations with land owners and managers, and/or any other actions that may be mutually deemed appropriate.

As specified for each below, the Service and WDFW will develop annual written reports addressing their joint and respective responsibilities no later than March 31<sup>st</sup> for the preceding calendar year ending December 31<sup>st</sup>. Upon request, the Service will share these annual reports

with Participants. Pursuant to Service and WDFW legal commitments, administrative requirements, and/or workload considerations, the Service will also make the annual reports available to other interested parties.

## 10.2 Service Responsibilities

In addition to the responsibilities that may be set forth elsewhere in this Agreement, the Service agrees to the following:

1. Upon execution of this Agreement, completion of associated Site Plans and Permit application reviews, and satisfaction of all other applicable legal requirements, the Service will issue Permits to Participants authorizing incidental take of the covered species as a result of lawful activities that occur on their enrolled property.
2. The Service will work jointly with WDFW to implement this Agreement, and provide technical assistance and funding, as available, to WDFW and/or Participants to assist with implementation of this Agreement and development of the associated Permit applications and Site Plans.
3. The Service will provide technical assistance to prospective Participants, upon their request, to help establish their baseline conditions and to identify appropriate conservation measures for their properties being considered for enrollment.
4. The Service will evaluate the monitoring results and reports submitted by WDFW and coordinate closely with WDFW after issuance of Permits to ensure Participants' compliance with this Agreement and their associated Site Plans and Permits.
5. The Service will provide WDFW with copies of all final Site Plans upon their execution.
6. The Service will contact Participants to this Agreement, as needed, and undertake coordination activities and compliance monitoring regarding their respective Site Plans and Permits.
7. If a Participant is found to be in non-compliance with this Agreement (see section 12) or their associated Site Plan or Permit, the Service will initiate Permit suspension or revocation procedures (codified at 50 CFR §13.27), which will include issuance of a letter of non-compliance to the Participant and notification of WDFW within 5 business days of issuing the letter. The Participant will have 60 days from receipt of the letter to rectify the non-compliance issue(s) or the Service will terminate the Participant's Permit.
8. The Service will inform WDFW within 5 business days of any terminations of a Participant's Permit for non-compliance pursuant to responsibility 8 above.
9. Through the annual reporting requirements of this Agreement and the Service's other program responsibilities under the Act, the Service will ensure that this Agreement and the terms and conditions of the associated Site Plans and Permits will not be in conflict

with other ongoing conservation or recovery programs for the covered species.

10. The Service will immediately notify WDFW when a Participant provides their required minimum 30-day notification for emergency translocation considerations (see section 7.3) and coordinate with WDFW to carry out any necessary translocation efforts.
11. The Service will recommend adaptive management measures to WDFW and Participants, as applicable, to avoid or minimize future above-baseline incidental take that may be noted in annual reports.

### 10.2.1 Service Monitoring and Reporting

The Service's annual report will include accurate information and records of the following:

- A summary of Service coordination activities with current and prospective Participants undertaken during the previous calendar year.
- The number of Participants and total acres of property enrolled under this Agreement as intervening property and as recovery emphasis area.
- A summary of overall baseline conditions and an estimate of all authorized incidental take that occurred on enrolled properties.
- A summary of assessed actual take (authorized and unauthorized) that has occurred on enrolled properties, including any that resulted from Participants' return to baseline conditions or that was documented through biological monitoring requirements of Participants (as specified under section 7.3.1 and 7.3.2).
- A list of Participants that are in noncompliance with this Agreement or their associated Site Plans or Permits, and identified measures to bring any such Participants back into compliance.
- A list of all Permits that have been terminated for non-compliance.
- Any other additional information that may be required or appropriate for monitoring of this Agreement and the associated Site Plans and Permits.

### 10.3 WDFW Responsibilities

In addition to the responsibilities that may be set forth elsewhere in this Agreement, WDFW agrees to the following:

1. WDFW will work jointly with the Service to implement this Agreement, and provide technical assistance, as available, to Participants to assist with implementation of the Agreement and the associated Site Plans. WDFW reserves the option to contract for management activities covered under this Agreement with other qualified parties subject

to prior approval of the Service.

2. WDFW will assist the Service and prospective Participants, upon their request, with surveys to determine baseline conditions for their properties being considered for enrollment. WDFW will provide such assistance on a priority-driven basis for properties comprising or within 5 miles of a recovery emphasis area and properties that may currently be occupied by Columbia Basin pygmy rabbits. WDFW will coordinate baseline surveys with the Service and provide a summary of results to the Service upon completion of any baseline surveys.
3. WDFW will undertake any necessary monitoring, capture, and/or translocation efforts for Columbia Basin pygmy rabbits in accordance with the management actions prescribed by the Draft Recovery Plan and the terms and conditions specified in recovery permit TE050-644-3.
4. WDFW will be available to coordinate with and assist the Service when a Participant provides their required minimum 30-day notification for emergency translocation considerations (see Service responsibility 10, above).
5. WDFW will immediately notify the Service of any Columbia Basin pygmy rabbit mortalities or instances of potential take, including those that may result from biological monitoring requirements of Participants as specified under section 7.3.1 and 7.3.2.
6. Through coordination with, and at the discretion of, any Participant(s), as applicable, WDFW will carry out predator control at recovery emphasis areas through coordination with the Service and as consistent with the management actions prescribed by the Draft Recovery Plan.
7. WDFW will recommend adaptive management measures to the Service and Participants, as applicable, to avoid or minimize future above-baseline incidental take that may be noted in annual reports.

This Agreement does not create any liability on the part of WDFW for take of Columbia Basin pygmy rabbits by any Participant who is in non-compliance with the responsibilities prescribed by this Agreement or their associated Site Plan or Permit.

### 10.3.1 WDFW Monitoring and Reporting

WDFW's annual report will include accurate information and records of the following:

- A summary of WDFW coordination activities with current and prospective Participants undertaken during the previous calendar year.
- A summary of all captive-bred and translocated Columbia Basin pygmy rabbits released at recovery emphasis areas (e.g., numbers, types, dates, locations, survival).

- Records of any Columbia Basin pygmy rabbits dispersing beyond recovery emphasis area boundaries and the adjacent Participant(s), or other neighboring land owner(s) or manager(s) (see section 13), involved.
- Status summaries for all known Columbia Basin pygmy rabbit subpopulations and an overall population assessment.
- Any other additional information that may be required or appropriate for monitoring of this Agreement and the associated Site Plans and Permits.

## **11.0 Management of Agreement**

### **11.1 Modification and Amendment of Agreement**

Either the Service or WDFW may propose modifications and amendments to this Agreement by providing written notice to the other party. Such notice will include a statement of the reason(s) for the proposed modification or amendment and an analysis of its anticipated effect(s) on the environment, the covered species, Participants, and on associated operations under this Agreement.

For proposed minor modifications, the non-proposing party will have sixty (60) days in which to evaluate and approve or disapprove of the proposed modification(s). A proposed minor modification will be deemed approved and effective sixty (60) days after receipt of written notice of the same unless the non-proposing party provides its disapproval of the proposed modification in writing. Minor modifications to this Agreement will include, but are not limited to, the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning of the Agreement; (b) correction or updating of any maps or exhibits; (c) correction or updating of information to reflect previously approved modifications / amendments to this Agreement; (d) changes to survey, monitoring, or reporting protocols; and, (e) conservation actions modified through adaptive management, as applicable.

Under some circumstances, the Service may give written notice that a proposed modification must be processed as a formal amendment because the Service has determined that, pursuant to its Federal regulatory responsibilities, such modification would result in outcomes that are significantly different from those analyzed for this Agreement. Such circumstances may include, but not be limited to, proposed modifications that would either result in a different level or type of take than analyzed in this Agreement, or that would result in a change to the cumulative conservation benefits to the covered species such that the Service's standard for safe harbor agreements may not be met. Modifications that necessitate formal amendment(s) will require further review and analysis, including public notification in the Federal Register, public comment period, and any other administrative compliance actions as required by applicable Federal laws, regulations, policies, and directives. Any modifications or amendments to this Agreement will not effect the regulatory assurances provided to Participants (see section 9), except for those that may be required by the provisions of 50 CFR §13.28(a)(1) through (4), §17.22(c)(7), and §17.22(c)(2)(iii), or other applicable Federal laws and regulations in force at that time.

## 11.2 Renewal of Agreement

This Agreement may be renewed, with or without modification as appropriate (see section 11.1), upon the approval of both the Service and WDFW.

## 11.3 Termination of Agreement

If, for any reason, WDFW ceases to be able to perform its obligations under this Agreement, it will give written notice of such circumstances to the Service at least 60 days prior to ceasing to perform its obligations under the Agreement. In such an event, the same substantive terms within this Agreement that apply to Participants and their associated Site Plans and Permits will remain in force.

The Service will not terminate this Agreement or an associated Site Plan or Permit for any reason except in accordance with the provisions of 50 CFR §13.28(a)(1) through (4), §17.22(c)(7), and §17.22(c)(2)(iii), or other applicable Federal laws and regulations in force at that time.

## 12.0 Responsibilities of Participants

Participants to this Agreement will carry out all responsibilities associated with implementation of their respective Site Plans and Permits. With regard to conservation benefits to the Columbia Basin pygmy rabbit, at a minimum participating land owners and managers of intervening properties and recovery emphasis areas will be responsible for implementing the conservation measures identified in section 7.3.1 and 7.3.2, respectively. Participants will also be responsible for meeting the general conditions of their Permit (codified at 50 CFR §13.47). The specific, agreed-upon conservation measures of Participants to this Agreement will be detailed in their Site Plans.

The following additional responsibilities primarily address future, routine management of the associated Site Plans and Permits, and will apply to all Participants to this Agreement.

**Modification of Site Plans:** The Service or a Participant to this Agreement may seek modification of a Site Plan by submitting a written request to the other party. The Service may approve minor modifications and will inform the Participant of such, in writing, within 30 days of receiving a request. Minor modifications shall include, but are not limited to, the following: (a) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning; (b) correction or updating of any maps or exhibits; (c) correction or updating of information to reflect previously approved minor modifications or amendments to the Site Plan or associated Agreement and Permit, as applicable; (d) changes to survey, monitoring, or reporting protocols; and, (e) mutually-agreeable conservation measures modified through adaptive management, as applicable.

If a Participant's proposed modification may constitute a formal amendment, the Service shall immediately begin review and processing of the request and notify the Participant of such action. Under some circumstances, the Service may give written notice that a proposed modification

must be processed as a formal amendment because the Service has determined that, pursuant to its Federal regulatory responsibilities, such modification would result in outcomes that are significantly different from those analyzed for this Agreement and/or the associated Site Plan or Permit. Such circumstances may include, but are not limited to, proposed modifications that would either result in a different level or type of take than analyzed in this Agreement, or that would result in a change to the cumulative conservation benefits to the covered species such that the Service's standard for safe harbor agreements may not be met. Modifications that necessitate formal amendment of a Site Plan will require further review and analysis, including public notification in the Federal Register, public comment period, and any other administrative compliance actions as required by applicable Federal laws, regulations, policies, and directives.

Any modification or amendment proposed by the Service shall be consistent with the regulatory assurances provided (see section 9), except that the Service reserves the right to modify or amend a Participant's Site Plan or associated Permit in accordance the provisions of 50 CFR §13.28(a)(1) through (4), §17.22(c)(7), and §17.22(c)(2)(iii), or other applicable Federal laws and regulations in force at that time.

**Renewal of Site Plans:** The Service will reevaluate a Site Plan upon a Participant's notice of intent to renew to determine whether the Site Plan will continue to provide a net conservation benefit for the Columbia Basin pygmy rabbit. If so, and with written concurrence of the Participant, the Service will renew their Site Plan, with or without modification as appropriate, and amend their associated Permit, provided that the duration of any Permit amendment will not exceed the duration of this Agreement.

**Transfer and Succession of Site Plans:** In the event that all or part of an enrolled property is sold, or all or part of the management authority of a Participant is otherwise surrendered, prior to the full term of their Site Plan and associated Permit, the Participant will notify the Service by certified letter at least 30 days in advance of the potential sale or surrender of authority. It will be the sole responsibility of the Participant to inform their successor(s) in interest or potential buyer(s) that the property is enrolled under this Agreement by their Site Plan and associated Permit. However, after any notification of change in ownership or management authority of the enrolled property, the Service, at their discretion, will attempt to contact the new land owner or manager to explain the Site Plan, the associated Permit, and this Agreement.

Upon agreeing in writing to become a party to an existing Site Plan, the Agreement, and the Permit, the Service may transfer the Permit pursuant to 50 CFR §13.25(c) and actions taken by the new Participant that result in the incidental take of Columbia Basin pygmy rabbits above the agreed-upon baseline conditions of the enrolled property would be authorized. In addition, the original baseline conditions of the subject enrolled property will remain in effect. If the new land owner or manager does not become a party to an existing Site Plan, nor request to become a party to a similar agreement, the Service will terminate the Permit and the new land owner or manager will not receive regulatory assurances or other benefits of the associated Permit authorizing incidental take of Columbia Basin pygmy rabbits.

A completed Site Plan shall be binding on and shall inure to the benefit of the Participant, and

their respective successors, in accordance with applicable Federal regulations (codified at 50 CFR §13.24).

**Termination of Site Plans and Permits:** A Participant to this Agreement may terminate their Site Plan prior to its expiration date for circumstances beyond their control, such as unforeseen hardship or catastrophic destruction of the species population numbers or habitat. However, the Participant or their enrolled successor in interest must give the Service written notice by certified letter of their intent to terminate their Site Plan. The Participant must also give the Service, WDFW, and/or their respective representatives an opportunity to relocate any potentially affected Columbia Basin pygmy rabbits within thirty (30) days of receipt of such written notice. Provided that the baseline conditions have been maintained, the Participant, subject to the previously mentioned notice requirement and opportunity to relocate individuals of the covered species, may return the enrolled property to baseline conditions even if the expected net conservation benefits have not been realized. Upon its termination, the Participant must relinquish their Site Plan and the associated Permit to the Service, and management of the species on the previously enrolled property would return to its status prior to issuance of the subject Permit (i.e., baseline conditions).

If a Participant terminates their Site Plan for any other reason, it and the associated Permit shall immediately cease to be in effect. In addition, any Columbia Basin pygmy rabbits that occur on the previously enrolled property will be protected by the take prohibitions of section 9 of the Act because the Participant's take authorization (via their Permit) will have become invalid upon termination of the Permit.

**Suspension or Revocation of Permits:** The Service may suspend or revoke a Participant's Permit in accordance with the provisions of 50 CFR §13.28(a)(1) through (4), §17.22(c)(7), and §17.22(c)(2)(iii), or other applicable Federal laws and regulations in force at that time. Such suspension or revocation may apply to the entire Permit, or only to specified covered lands or covered activities.

**Remedies:** The Service and each Participant shall have all remedies otherwise available to enforce the terms of this Agreement and their associated Site Plan and Permit, except that neither the Service nor Participant shall be liable in damages for any breach of a Site Plan, any performance of or failure to perform an obligation under a Site Plan, or any other cause of action arising from a Site Plan.

### **13.0 Neighboring Land owners and Managers**

The Service and WDFW recognize that successful implementation of conservation measures on enrolled properties could impact baseline conditions of neighboring land owners and managers ("neighbors"). The Service and WDFW also recognize that some prospective Participants may be reluctant to initiate conservation measures that could have land-use implications to their neighbor(s). Therefore, if Participants' voluntary conservation measures are likely to result in the covered species occupying adjacent properties that are not enrolled under this Agreement, the Service will contact the neighbors and make every reasonable effort to include them as voluntary

signatories to an existing or new Site Plan using the procedures set forth in section 7 of this Agreement, and to issue Permit(s) to the neighbor(s) accordingly.

#### **14.0 Dispute Resolution**

The Service and WDFW agree to work together and with Participants in good faith to resolve any disputes that might arise from this Agreement and the associated Site Plans and Permits. The Service and WDFW also agree to engage in formal dispute resolution, as necessary and as feasible through available funding (see section 15.0).

#### **15.0 Availability of Funds**

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 by the Service, WDFW, or Participants to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Service will not be required under this Agreement to expend any Federal agency-appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

Implementation of this agreement by WDFW is subject to the availability of funds and can be suspended for lack of funds.

No direct funding obligations will be required of Participants to this Agreement.

#### **16.0 Remedies**

The Service and WDFW will have all remedies otherwise available to enforce the terms of this Agreement.

#### **17.0 Third-Party Beneficiaries**

Neither this Agreement nor the associated Site Plans that are entered into in accordance with this Agreement create any new right or interest in any member of the public as a third-party beneficiary. Neither this Agreement nor the associated Site Plans authorize anyone not a party to this Agreement and the associated Site Plans to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement and/or the associated Site Plans. The duties, obligations, and responsibilities of the Service, WDFW, and Participants to this Agreement with respect to third parties will remain as imposed under existing law.

#### **18.0 Relationship to Authorities**

The terms of this Agreement and associated Site Plans and Permits shall be governed by and construed in accordance with applicable Federal and State law. Nothing in this Agreement or an associated Site Plan or Permit is intended to limit the authority of the Service or WDFW to fulfill their responsibilities under Federal and State laws. All activities undertaken pursuant to this

Agreement and associated Site Plans and Permits must be in compliance with all applicable Federal and State laws and regulations.

## **19.0 Other Federally Listed Species**

The possibility exists that other federally listed species could occur on properties enrolled under this Agreement as a direct result of the conservation measures specified in this Agreement and associated Site Plans. Should such occur, and a Participant so requests, the Service may agree to amend this Agreement and/or any associated Site Plan(s) and Permit(s) to cover the additional species and to establish appropriate baseline conditions for other such species. The Service will ensure that any such amendments will comply with all applicable Federal laws and regulations.

Surveys for other federally listed species will not be required of prospective Participants in order to enroll their property under this Agreement. However, incidental observations of other federally listed species that are made during surveys pursuant to this Agreement will be documented and shared among the Service, WDFW, and the prospective Participant involved. If other federally listed species are documented on property being considered for enrollment, the Service will consult with and provide technical assistance to Participants to include the species within this Agreement and/or their respective Site Plans and Permits, and/or provide recommendations to avoid take and minimize any disturbance to the species.

## **20.0 Additional Conservation measures**

Nothing in this Agreement will be construed to limit or constrain the Service, WDFW, or Participants from implementing conservation measures not identified in this Agreement or associated Site Plans, provided that any such additional measures maintain the original baseline conditions of enrolled property and do not affect the conservation benefits or regulatory assurances set forth by this Agreement and the associated Site Plans and Permits.

## **21.0 Contacts, Notices, and Reports**

Current or prospective Participants, and other interested parties, may contact either of the following Service or WDFW representatives to discuss any matters related to this Agreement. The following representatives will also be responsible for facilitating any necessary coordination between the Service, WDFW, and Participants with regard to this Agreement. In addition, any notices and reports, including monitoring and annual reports, required by this Agreement and/or the associated Site Plans and Permits will be delivered in the prescribed manner to the following representatives, as appropriate.

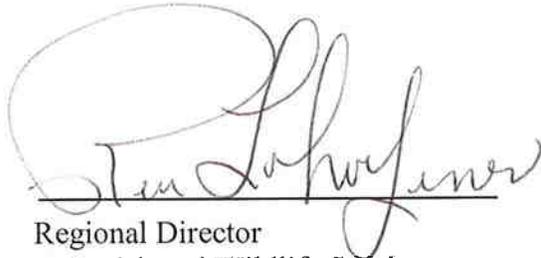
Columbia Basin Pygmy Rabbit Safe Harbor Agreement Coordinator  
Upper Columbia Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
11103 East Montgomery Drive  
Spokane, Washington 99206  
Phone: (509) 891-6839

Columbia Basin Pygmy Rabbit Safe Harbor Agreement Coordinator  
Region 2 Office  
Washington Department of Fish and Wildlife  
1540 Alder Street NW  
Ephrata, Washington 98823  
Phone: (509) 754-4624

Specific contact information and the reporting and notification obligations of Participants to this Agreement will be identified in their Site Plans, but at a minimum will include items 4 and 5 under section 7.3.1, items 5 and 6 under section 7.3.2, and those associated with other Participant responsibilities as identified under section 12, as applicable.

**22.0 Authorizing Signatures**

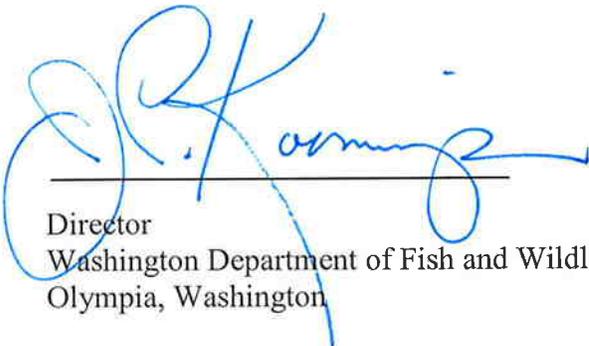
IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date of the last signature below.



Regional Director  
U.S. Fish and Wildlife Service  
Portland, Oregon

Oct 24 2006

Date



Director  
Washington Department of Fish and Wildlife  
Olympia, Washington

10/24/06

Date

## 23.0 Glossary

Act – Federal Endangered Species Act of 1973, as amended.

Adaptive Management – Continual process of research, planning, implementation, monitoring, and evaluation of conservation actions so that future adjustments can be made to fully achieve recovery objectives.

Agreement – Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit.

Baseline – Number of Columbia Basin pygmy rabbits on an enrolled property at the time of Permit issuance to a Participant, or as otherwise determined beforehand through a baseline commitment letter issued by the Service. Baseline is typically expressed as an estimate of population abundance and distribution (occupied burrows for intervening properties) or amount and type(s) of habitat that sustain the covered species on an enrolled property (for recovery emphasis areas).

CFR – Code of Federal Regulations: a publication that codifies the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government.

Conservation Measure -- Voluntary management commitment of a Participant that is reasonably expected to result in a net conservation benefit to the Columbia Basin pygmy rabbit.

Covered Species – Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*): to include **any** intercross pygmy rabbits in captivity that are considered essential for genetics management efforts; and all released, captive-bred, intercross pygmy rabbits, as well as their naturally reproduced progeny, that have some minor level of non-Columbia Basin pygmy rabbit ancestry (i.e.,  $\leq 25\%$ ).

Effective Population Size – Represented as  $N_e$ , it is the number of animals in a population that actually contribute to reproduction, and is often much smaller than the census, or total, number of individuals in the population, which is represented as  $N$ .

Enrolled Property – Property of Participants that is enrolled under the Agreement through signed Site Plans and issuance of Permits.

Federal Register – Publication of the U.S. Government Printing Office that disseminates official information from all three branches of the Federal Government.

FR – Federal Register.

Incidental Take – Take that is incidental to otherwise lawful activities.

Intercross – Any exchange of genetic material (e.g., through mating, fertilization, or other

means) between different species, subspecies, or distinct vertebrate population segments within a taxon.

Intervening Property – Non-Federal / non-WDFW Property within the historic distribution of the Columbia Basin pygmy rabbit that is outside of recovery emphasis areas.

Neighbor – Non-Federal / non-WDFW land owner and/or manager of property that is not enrolled under the Agreement, but that is adjacent to enrolled property.

Net Conservation Benefit – Result of a conservation measure that is reasonably expected to contribute to conservation of the Columbia Basin pygmy rabbit.

Participant – A non-Federal / non-WDFW land owner and/or manager who enrolls property under the Agreement through their signed Site Plan and successful Permit application.

Permit – An Enhancement of Survival Permit issued to a Participant, in conjunction with the Agreement and their Site Plan, pursuant to section 10(a)(1)(A) of Act.

Recovery Emphasis Area – Sites that are actively managed to help conserve the Columbia Basin pygmy rabbit in the wild and where long term recovery objectives will be attained. Recovery emphasis areas contain habitat characteristics that could currently, or potentially through appropriate enhancement measures, sustain a viable subpopulation of Columbia Basin pygmy rabbits.

Regulatory Assurances – Federal regulatory certainty provided to Participants through their completed Site Plans, and reduction of their future management liability for incidental take of Columbia Basin pygmy rabbits on enrolled properties provided through their Permits.

Service – U.S. Fish and Wildlife Service.

Site Plan – Legally binding document that enrolls Participants under the Agreement and facilitates issuance of a Permit.

Survey Habitat – Habitat that may be occupied by Columbia Basin pygmy rabbits. Survey habitat includes: 1) areas that contain greater than or equal to 10% sagebrush cover that averages at least 20” tall by stand type (i.e., relatively continuous, uniform vegetation cover); and 2) thin-soil sites, or other sparsely vegetated areas, that contain habitat patches of at least 400 ft<sup>2</sup> (approximately 0.01 acre) that consist of greater than or equal to 20% sagebrush cover that averages at least 20” tall.

Take – To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect a species listed as threatened or endangered under the Act, or attempt to engage in any such conduct.

WDFW – Washington Department of Fish and Wildlife.

## 24.0 Literature Cited

- USFWS. 2004. Recovery Outline for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*). U.S. Fish and Wildlife Service, Portland, Oregon. 25 pp.
- USFWS. 2006. Draft Federal Recovery Plan for the Columbia Basin Pygmy Rabbit. U.S. Fish and Wildlife Service, Portland, Oregon. Internal review draft on file.
- WDFW. 1995. Washington State Recovery Plan for the Pygmy Rabbit. Wildl. Manage. Prog., Wash. Dept. of Fish and Wildl., Olympia, Washington. 73 pp.
- WDFW. 2001. Washington State Recovery Plan for the Pygmy Rabbit: August 2001 Addendum. Wildl. Manage. Prog., Wash. Dept. of Fish and Wildl., Olympia, Washington. 18 pp.
- WDFW. 2003. Washington State Recovery Plan for the Pygmy Rabbit: April 2003 Addendum. Wildl. Manage. Prog., Wash. Dept. of Fish and Wildl., Olympia, Washington. 10 pp.
- WDFW. 2004. Pygmy Rabbit Survey Methods. Wildl. Manage. Prog., Wash. Dept. of Fish and Wildl., Olympia, Washington. 6 pp.

## **Appendix A – Federal Fish and Wildlife Permit Application Form**

## **Appendix B – Example Site Plan**

Note: Explanatory comments in the following template Site Plan are highlighted.

Note: A Glossary of terms used in the following template Site Plan is provided in the Agreement.

Note: Supplementary information and exhibits may be attached to a Site Plan, as necessary.



# United States Department of the Interior



**FISH AND WILDLIFE SERVICE**  
**Washington Fish and Wildlife Office**  
Eastern Washington Field Office  
11103 East Montgomery Drive  
Spokane, Washington 99206

April 12, 2011

Dennis Beich, Regional Manager  
Washington Department of Fish and Wildlife  
1550 Alder Street NW  
Ephrata, Washington 98823-9699

Subject: Proposed Modifications to the Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit

Dear Mr. Beich:

This letter is provided to transmit U.S. Fish and Wildlife Service (Service) proposed modifications to the Template Safe Harbor Agreement (Agreement) for the Columbia Basin pygmy rabbit, per section 11.1 of the Agreement. The proposed modifications are considered minor and would ensure that the Agreement, and the associated permit coverage and regulatory assurances to Agreement participants, is inclusive of all captive-bred and translocated wild pygmy rabbits currently considered necessary for Columbia Basin pygmy rabbit recovery efforts. Other than addressing the covered species, as described below, we do not anticipate any effects from the proposed modifications to the environment, participants to the Agreement, or any associated operations under the Agreement. The proposed modifications address sections 1.0 (Introduction), 23.0 (Glossary), and 24.0 (Literature Cited) of the agreement, which would be modified as follows.

## ***1.0 Introduction***

***Covered Species:*** *The Columbia Basin distinct population segment of the pygmy rabbit (*Brachylagus idahoensis*), federally listed as endangered under the Act, is considered the "covered species" for purposes of this Agreement. Captive-bred, "intercross" pygmy rabbits that have some level of non-Columbia Basin ancestry and wild pygmy rabbits translocated to the Columbia Basin from other populations are considered essential for Columbia Basin pygmy rabbit recovery efforts (USFWS 2010). Any such intercross or translocated wild pygmy rabbits that are released within the Columbia Basin, as well as their naturally reproduced progeny, are considered Columbia Basin pygmy rabbits with respect to this Agreement and are included within the incidental take authority that is sought under this Agreement and associated Site Plans and Permits.*



**23.0 Glossary**

*Covered Species – Columbia Basin distinct population segment of the pygmy rabbit (Brachylagus idahoensis): to include any intercross or translocated wild pygmy rabbits, as well as their naturally reproduced progeny, that are considered essential for recovery efforts.*

**24.0 Literature Cited**

*The following reference would be added:*

*USFWS. 2010. Columbia Basin Distinct Population of the Pygmy Rabbit (Brachylagus idahoensis) Five-Year Review: Summary and Evaluation. U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, Lacey, Washington. 25 pp.*

If you approve of the proposed modifications, they will become effective upon our receipt of your written approval. We request that you provide a formal written response to us regarding these modifications as soon as possible so that there is no perceived lapse in permit coverage to the agreement participants and/or a potential delay in planned recovery actions.

In accordance with section 11.1 of the Agreement, the Washington Department of Fish and Wildlife (WDFW) has sixty days in which to evaluate and approve or disapprove of the above proposed modifications. These modifications would be deemed approved and effective sixty days after your receipt of this letter, unless WDFW provides its disapproval or approval of the proposed modifications in writing prior to that date.

If you have any questions about this letter or would like to discuss the proposed modifications, please contact Mark Miller at our Eastern Washington Field Office in Spokane at (509) 893-8001.

Sincerely,



Ken Berg, Manager  
Washington Fish and Wildlife Office

cc:  
FWS-ES, Portland (L. Salata)  
FWS-ES, Spokane (C. Warren)  
WDFW, Olympia (H. Allen)

APR 22 2011



STATE OF WASHINGTON  
DEPARTMENT OF FISH AND WILDLIFE  
WILDLIFE PROGRAM

*Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2515; TTY (800) 833-6388  
Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA*

April 19, 2011

Ken S. Berg, Manager  
U.S. Fish and Wildlife Service  
Washington Fish and Wildlife Office  
510 Desmond Drive, SE, Suite 102  
Lacey, Washington 98503

Subject: Approval of the Proposed Modification to the Template Safe Harbor Agreement  
for the Columbia Basin Pygmy Rabbit

Dear Mr. ~~Berg~~ <sup>KSCA</sup>

This letter is provided as a response to the proposed modifications to the Template Safe Harbor Agreement for the Columbia Basin Pygmy Rabbit identified in your letter dated April 12, 2011. We have reviewed the proposed modifications and find that they are consistent with our collaborative discussions and we approve these changes.

Sincerely,

Nate Pamplin, Assistant Director  
Wildlife Program