

consequences of long-term isolation from other population segments and is responding, and will continue to respond, to the different anthropogenic influences in the region.

Based on the above information, we conclude that the loss of the Columbia Basin pygmy rabbit would represent a significant gap in the range of the taxon, due to the loss of a conspicuous peripheral and isolated extension of its current and historic range.

#### *Conclusion of DPS Review*

Based on the available information described above, we find that the Columbia Basin pygmy rabbit is discrete from, and significant to, the remainder of the taxon, and thus constitutes a DPS. The discreteness of this population segment is demonstrated by its physical, genetic, and ecological isolation from the remainder of the taxon. The significance of this population segment is demonstrated by: (1) Its genetic characteristics, which differ markedly from other population segments; (2) its long-term persistence in the unique ecological setting of the Columbia Basin; and (3) the significant gap in the current and historic range of the taxon that the loss of this population segment would represent. As required by our DPS policy, we have determined that the bounds of this DPS are conterminous with the historic distribution of the pygmy rabbit within the Columbia Basin ecosystem (Figure 2).

#### **Summary of Comments and Recommendations**

In our November 30, 2001, proposed rule (66 FR 59769) and associated notifications, we requested that all interested parties submit comments, data, or other information that might contribute to development of a final listing decision. The comment period for the proposed rule was originally open from November 30, 2001, through January 29, 2002. During this period, we received a number of requests to extend the comment period and five requests to hold a public hearing to address the proposed rule. On February 7, 2002, we extended the comment period for the proposed rule through February 28, 2002. In addition, after coordinating meeting details with the requesters, on February 12, 2002, we held a public meeting in East Wenatchee, Washington, to present the information we had available on the Columbia Basin pygmy rabbit, to receive input, and to discuss the proposed rule with any interested parties. On July 17, 2002, we extended the comment period for the proposed rule through August 1, 2002.

On November 30, 2001, February 7, 2002, and July 17, 2002, we contacted appropriate Federal, State, tribal, and local resource agencies and governmental offices, scientific organizations, agricultural organizations, outdoor user groups, environmental groups, and other interested parties and requested that they comment on the proposed rule. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at the public meeting, by letter, facsimile, or, during the original and final open comment periods, by electronic mail. Notices of the extended comment period and public meeting announcement were also published in local newspapers on February 7, 2002, including the *Wenatchee World*, *Columbia Basin Herald*, and *Spokesman Review*.

We received a total of 34 letters, facsimiles, comment cards, and electronic mailings from the public with comments and/or questions concerning the proposed rule on the Columbia Basin pygmy rabbit during the three comment periods. We also received 2 letters from the same individual. Of the comments received, 9 were in support of the listing action, 6 were opposed to the listing, and 19 were neutral.

We revised and updated the information contained in this final rule to reflect the additional information we received during the open comment period for the proposed rule. We address substantive comments concerning various aspects of the proposed rule, below. General topics are categorized and comments of a similar nature under each topic are grouped together below, along with our response to each.

#### *Impact of Listing Action*

*Issue 1:* We received a number of requests to explain more fully what the potential effects of listing the Columbia Basin pygmy rabbit would be on private lands, or private management actions on public lands, throughout the population's historic distribution.

*Our Response:* Once a species becomes listed, either through our emergency or normal listing process, section 9 of the Act sets forth a series of general prohibitions that apply to that species. Of primary concern for Columbia Basin pygmy rabbits, the prohibitions make it illegal for any person subject to the jurisdiction of the United States to "take" them. The definition of "take" under the Act includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such

conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to the listed wildlife by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. "Harass" is further defined to include actions that create the likelihood of injury to listed wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Other general prohibitions make it illegal to import or export listed wildlife or its parts or products, transport it in interstate or foreign commerce in the course of commercial activity, or sell it or offer it for sale in interstate or foreign commerce. Section 11 of the Act describes the civil and criminal penalties that may be imposed on any individual or organization that violates these prohibitions.

Section 10 of the Act provides a number of exceptions to the prohibitions against prescribed in section 9. In other words, activities that could result in take of the Columbia Basin pygmy rabbit may be permitted by the Service if certain conditions are met. Under section 10(a)(1)(A), we may permit activities otherwise prohibited by section 9 if they are conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit (recovery permits). Under section 10(a)(1)(B), we may permit activities otherwise prohibited by section 9 if the resulting take is incidental to, and not the purpose of, the otherwise lawful activities (incidental take permits). In order for us to issue an incidental take permit, an applicant must submit an HCP that specifies: (1) The impact that will likely result from such taking; (2) what steps will be taken to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (3) what alternative actions to such taking were considered and the reasons why such alternatives are not used; and (4) other such measures that the Secretary of Interior (Secretary) may require.

With regard to non-Federal property, if pygmy rabbits are not present on the property, the Act's taking prohibition would not apply there. Where non-Federal property is occupied by the Columbia Basin pygmy rabbit, if management activity would not result in take, section 9 would also not apply. Even if non-Federal property is occupied by the pygmy rabbit and management activities are likely to result in take, an incidental take permit may still be available under section