

10(a). Service and technical assistance will be available to landowner(s) and/or operator(s) to help them avoid, minimize, or mitigate any adverse impacts to the Columbia Basin pygmy rabbit.

Proposed activities authorized, funded, or carried out by a Federal agency are subject to the consultation requirements Congress prescribed in section 7 of the Act. Circumstances under which a proposed Federal action or Federal nexus may affect the Columbia Basin pygmy rabbit will be handled through consultation with the involved Federal agency and applicant(s), as necessary, on a case-by-case basis, in accordance with section 7 of the Act.

Issue 2: Various commenters expressed concern regarding circumstances where landowners or operators of currently unoccupied habitat are adjacent to occupied sites or areas potentially used for reintroduction efforts, and what the consequences of future occupation of these lands by the Columbia Basin pygmy rabbit may be.

Our Response: Authorization of take of rabbits incidental to otherwise lawful activities may be available through development of HCPs and issuance of incidental take permits in accordance with section 10(a) of the Act. In addition, landowners or operators may enter into Safe Harbor Agreements that provide regulatory assurances to landowners who manage their properties in such a way as to attract Columbia Basin pygmy rabbits. As with currently occupied habitats, we will continue to work cooperatively with, and provide technical assistance to, landowners and operators to help them avoid, minimize, or mitigate any potential future impacts to the Columbia Basin pygmy rabbit.

Critical Habitat

Issue 3: We received a number of comments concerning critical habitat and how it relates to the emergency, proposed, and final rules for the Columbia Basin pygmy rabbit.

Our Response: Neither our emergency, proposed, nor this final rule designates critical habitat for the Columbia Basin pygmy rabbit. We find that designation of critical habitat for the Columbia Basin pygmy rabbit is not determinable at this time because information sufficient to perform the required analyses of the impacts of the designation is lacking (*see Critical Habitat*, below). We will continue to protect the Columbia Basin pygmy rabbit and its habitat through section 7 consultations on Federal actions that may affect this population segment,

through the recovery process, through HCPs under section 10, and through enforcement of take prohibitions under section 9 of the Act.

National Environmental Policy Act (NEPA)

Issue 4: Several comments suggested the need for NEPA analyses, or requested an explanation of why the NEPA process is not necessary, for this final rule.

Our Response: We have determined that environmental assessments (EAs) and environmental impact statements (EISs) developed pursuant to NEPA do not need to be prepared in connection with regulations adopted pursuant to the listing process under section 4(a) of the Act. The Federal Council on Environmental Quality has determined, based on court decisions, that listing actions under the Act are exempt from NEPA review as a matter of law. We published a notice that further describes our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Determination of Status of Columbia Basin and Other Pygmy Rabbit Populations

Issue 5: We received a number of comments and questions concerning how new information about the presence of additional subpopulations of Columbia Basin pygmy rabbits may affect the status of the population, the listing process, or this final rule.

Our Response: If significant new information becomes available regarding additional subpopulations of Columbia Basin pygmy rabbits, the new information could affect the priority of the management actions identified for the captive propagation program and/or the ongoing conservation actions being implemented for the remaining wild portion of the population. The information we currently have available indicates that it is unlikely that a sufficiently large, well distributed "unknown" subpopulation may still occur that would completely remove the need for protection of the species under the Act. No additional information on locations of other subpopulations of Columbia Basin pygmy rabbits was provided during the comment period.

Issue 6: We received a number of comments and questions concerning how we determined the historic range of the pygmy rabbit, what the abundance and status of various pygmy rabbit populations are, how abundance estimates are determined, and the causes behind the recent declines in the Columbia Basin pygmy rabbit.

Our Response: Information concerning the current, historic, and prehistoric distribution of the Columbia Basin pygmy rabbit population primarily comes from scientific literature, including peer-reviewed journal articles, doctoral dissertations, master's theses, and/or State natural resource agency reports and data. These sources are referenced within the body of the rule, as appropriate. As discussed above (*see Distribution and Status*), there is very little information currently available regarding the abundance of pygmy rabbits throughout the majority of their current range. Due to the ongoing efforts of the WDFW to monitor and study pygmy rabbits over the last several decades, there is considerably more information available regarding the current abundance and distribution of the Columbia Basin population.

With regard to the past distribution and abundance of the Columbia Basin pygmy rabbit, we assume that this population was more broadly distributed and had a greater abundance of individuals within this region historically. This assumption is based on the available information addressing other pygmy rabbit populations, the population dynamics of other Leporid species, and the general concepts and theory of minimum viable populations. Given this available information, it is unlikely that the Columbia Basin pygmy rabbit would have persisted within this region for thousands of years with such a limited distribution and at such minimum abundance levels.

Nevertheless, the available information only indicates the occurrence of several small subpopulations in portions of five counties in central Washington since the early 1900s. As such, the historic distribution and abundance of the Columbia Basin pygmy rabbit that we report in this final rule represent minimum estimates.

Obtaining precise estimates of wildlife abundance levels is often very difficult. This is because: (1) The abundance of many wildlife populations naturally fluctuates between years, and even between seasons within years; (2) individuals are often difficult to observe; (3) individuals often move between observations or there is an unknown amount of mixing of individuals between observed areas; and (4) observation techniques can affect the behavior of the individuals being observed. Because of these limitations, managers often use a "surrogate", or index, to estimate a probable range of values concerning wildlife abundance levels. With regard to pygmy rabbits, the occurrence of their burrows and estimates of the burrows' ages and/or