

maintaining secure and appropriately marked cages, providing discrete holding areas or separation fencing between cages, and developing and adhering to strict transport and handling procedures to minimize any potential for direct contact between the captive pygmy rabbit populations. Furthermore, notification of any instances of commingling of Columbia Basin and other pygmy rabbits will be provided to the Service within 3 working days of the incident, and will include a description of the circumstances under which the commingling occurred and corrective measures to address that and any potential future incidents.

*Issue 12:* Concerns were expressed regarding the potential impacts to the Columbia Basin pygmy rabbit from various ongoing research and conservation activities, and our potential actions to address these concerns.

*Our Response:* We recognize that certain research and conservation activities have the potential to directly and indirectly affect the Columbia Basin pygmy rabbit. The available information addressing the circumstances under which these impacts may be occurring, or have the potential to occur in the future, are referenced in the preamble to the rule, as appropriate.

Research and management activities for the Columbia Basin pygmy rabbit will be regulated under the section 10 permitting process. The WDFW has closely coordinated its management activities to conserve the Columbia Basin pygmy rabbit with us. In addition, in cooperation with the WDFW, WSU, and the Oregon Zoo, we have developed a number of appropriate measures to avoid or reduce the risk of take of the Columbia Basin pygmy rabbit. These measures were made conditions of the December 18, 2001, recovery permit and its revisions that we issued for the captive propagation program and ongoing management activities at the Sagebrush Flat site (see Previous Federal Action, above). We will continue to work cooperatively with interested parties on activities conducted for scientific purposes or to enhance the propagation or survival of the Columbia Basin pygmy rabbit under section 10 of the Act.

*Issue 13:* Concern was expressed regarding our use and incorporation of information from other pygmy rabbit populations in the background biological discussions and other sections of the emergency and proposed listing rules. In addition, questions were raised regarding whether this information is appropriate or applicable to the Columbia Basin pygmy rabbit.

*Our Response:* Wildlife investigations often use information concerning closely related populations, subspecies, species, and even genera when making biological inferences about a given population. It is important that any inferences made from these comparisons recognize the potential differences between the populations (or higher taxa), and that any conclusions are limited to what the available information supports. However, understanding the life history of a closely related population (or higher taxa) is often beneficial, and at times even essential, to a more complete understanding of the population of interest. While the Columbia Basin pygmy rabbit is distinct from other pygmy rabbit populations, we recognize that they share many similarities in their life history characteristics. Recognizing these similarities is critical to our understanding of the Columbia Basin population.

Service policy concerning the consideration of a DPS for listing under the Act requires us to evaluate the discreteness and significance of a given population in comparison to the remainder of its taxon. Considering all of the available information on a species helps determine if significant differences may exist between its discrete populations.

*Issue 14:* Several commenters expressed concern regarding the area affected by the listing, and the potential extent of reintroduction efforts that may be undertaken to address recovery of the Columbia Basin pygmy rabbit.

*Our Response:* This final rule lists as endangered the pygmy rabbit in the Columbia Basin of central Washington (Figure 2). Appropriate sites within this region that could potentially be used for reintroduction efforts will be identified as our recovery program is further developed. Pygmy rabbit populations in other States throughout the species' historic range are not included in this listing action, nor will any areas outside of the historic range of the Columbia Basin pygmy rabbit population be considered for any recovery actions.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we sought independent expert review by seven specialists during the comment period on the proposal to list the Columbia Basin pygmy rabbit. The purpose of these reviews is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. The seven independent reviewers would provide expertise on pygmy rabbit biology, population

genetics, Columbia Basin shrub steppe ecology and rangeland management. Six of these reviewers submitted comments on the proposed listing, and one did not respond. Experts that provided comments include: Two pygmy rabbit researchers, one from Arizona State University and one from Idaho State University; a research wildlife biologist from the Biological Resources Division of the U.S. Geological Survey; a population geneticist from the University of Denver; a research biologist from the WDFW; and a senior scientist from NMFS. All of the experts concurred that the proposed listing action was justified and appropriate. We have incorporated their comments into this final determination. We address substantive comments raised by the peer reviewers concerning various aspects of the emergency and proposed rules below, and issues of a similar nature are grouped together, along with our response to each.

*Issue 1:* The role of habitat loss and fragmentation in the long-term decline of the Columbia Basin pygmy rabbit should be further emphasized in the final rule. In addition, measures to address habitat protection and restoration, including identifying specific habitat parameters and the control of exotic and/or invasive plant species, should be further addressed in the final rule.

*Our Response:* We recognize that habitat loss and fragmentation have likely played a primary role in the long-term decline of the Columbia Basin pygmy rabbit. In addition, we recognize that habitat protection and restoration will play a central role in future conservation efforts for this population. We will review and further develop specific habitat parameters and criteria, in cooperation with interested parties, at such time as we undertake future Federal conservation or recovery initiatives for the Columbia Basin pygmy rabbit.

*Issue 2:* The biophysical role of habitat (e.g., thermal cover provided by native bunch grasses), and the potential impacts to this role from livestock grazing, should be further emphasized in the final rule.

*Our Response:* We recognize the potential for habitat to play an important biophysical role for the Columbia Basin pygmy rabbit, and that livestock grazing may affect these habitat parameters. However, there is very little additional information available regarding this potential relationship and, until it becomes available, clarification of this issue needs further investigation.