

**FINDINGS AND RECOMMENDATIONS REGARDING ISSUANCE OF A SAFE  
HARBOR AGREEMENTS SECTION 10 ENHANCEMENT OF SURVIVAL PERMIT  
FOR LAHONTAN CUTTHROAT TROUT TO THE OREGON DEPARTMENT OF FISH  
AND WILDLIFE (TE-64323A-0)**

**I. DESCRIPTION OF PROPOSAL**

The Oregon Department of Fish and Wildlife (ODFW) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). The permit application includes a proposed "Safe Harbor Agreement for Voluntary Enhancement/Restoration Activities Benefiting Lahontan cutthroat trout on Private Lands within the Oregon Portion of the Northwest Geographic Management Unit" (SHA) between ODFW and the Service. ODFW will hold the enhancement of survival permit, and enroll landowners (Cooperators) through Cooperative Agreements and by issuing Certificates of Inclusion. The Cooperative Agreement will authorize Cooperators to take Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) a federally-listed threatened species, in accordance with activities stipulated in the proposed SHA and Cooperative Agreement. The SHA may include any and all private lands within the Oregon portion of the Northwest Geographic Management Unit area for Lahontan cutthroat trout in Malheur and Harney Counties, Oregon. The Oregon portion of the Northwest Geographic Management Unit is designated in the "Recovery Plan for the Lahontan Cutthroat Trout" (Fish and Wildlife Service 1995) as the Quinn River basin and the Coyote Lake basin in Oregon. The Alvord basin in Oregon was not designated as part of the Northwest Geographic Management Unit in the recovery plan, but has been added to the unit for planning purposes by the Northwest Geographic Management Unit working group to include several introduced populations of Lahontan cutthroat trout in the Alvord basin.

The primary objective of the SHA is to encourage voluntary habitat restoration, maintenance or enhancement activities to benefit Lahontan cutthroat trout. The SHA relieves a landowner who enters into the provisions of a Cooperative Agreement with the ODFW from any additional section 9 liabilities under the Act beyond that which exists at the time the Cooperative Agreement is signed and Certificate of Inclusion issued ("regulatory baseline"). A Safe Harbor Agreement encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits and Safe Harbor Agreements are found in 50 CFR 17.32(c). As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the Cooperative Agreement, even if such use results in the take of individual Lahontan cutthroat trout or harm to this species' habitat.

As proposed in the SHA, landowners within the Northwest Geographic Management Unit, within Oregon, may be enrolled by the ODFW under the SHA. Landowners, as Cooperators, would receive a Certificate of Inclusion from the ODFW when they sign a Cooperative Agreement. The Cooperative Agreement will include: (1) a map of the property; (2) delineation of the portion of the property to be enrolled and its stream mileage/feet; (3) the property's baseline and biological assessment which would include a stream analysis (with photos) of the

The Service has determined that approval of the proposed SHA qualifies for a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and, (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant.

Based upon this determination, we do not intend to prepare further NEPA documentation. The findings are based upon the following documents incorporated by reference: (1) the SHA; (2) Biological Opinion on the Effects of the Issuance of an Enhancement of Survival Permit Under Section 10(a)(1)(A) of the Act to the ODFW; and, (3) Environmental Action Statement Screening Form for the SHA.

### *Analysis of Effects*

The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance, or enhancement activities to benefit Lahontan cutthroat trout by relieving a landowner, who enters into, and implements, the provisions of a Cooperative Agreement and Certificate of Inclusion with ODFW, from any additional section 9 liability under the Act beyond that which exists at the time the Cooperative Agreement is signed (baseline responsibilities). As long as landowners carry out agreed-upon conservation measures on their property and maintain their baselines, they may continue or undertake future covered management activities. The overall goal is to produce conservation measures that are mutually beneficial to the Cooperator and the long-term existence of Lahontan cutthroat trout.

The SHA will provide landowners with opportunities and assurances leading to their participation to conserve the species. This will facilitate Lahontan cutthroat trout use of private lands, thus providing for the reintroduction, expansion, and/or preservation of Lahontan cutthroat trout populations needed to protect the species' genetic material. Conservation measures on private lands will enhance networked populations and increase numbers of Lahontan cutthroat trout spawning areas, migration corridors, and healthy population dynamics within the networked areas. These are all expected (or likely) benefits of the proposed SHA. Efforts to recover the species without involving and incorporating these private lands and landowners may impact our ability to make measurable progress towards Lahontan cutthroat trout recovery.

Each Cooperative Agreement will have a minimum duration of 10 years within the 30-year time frame of the SHA. The actions (Lahontan cutthroat trout reintroductions and habitat restoration) proposed are of limited duration, thus the Cooperative Agreement's benefits appear transitory. However, existing habitat required to maintain networked populations and that is maintained under this SHA, will remain as agreed-upon baseline; therefore, no existing habitat or habitat benefits will be lost or reduced upon return to baseline at the end of a Cooperative Agreement. Additionally, habitat restored as a result of the Cooperative Agreements will not necessarily

- C. Allowing private landowners to participate in activities that benefit Lahontan cutthroat trout without fear of regulatory impacts from having a threatened species on their land;
- D. Facilitating networking of populations which enhances persistence of Lahontan cutthroat trout populations;
- E. Expanding areas needed for reintroduction, augmentation, and preservation of Lahontan cutthroat trout populations to protect the species' genetic material;
- F. Increasing numbers of Lahontan cutthroat trout for use in translocation to other populations;
- G. Increasing habitats for Lahontan cutthroat trout spawning, migration, and fostering healthy population dynamics within networked areas; and
- H. Decreasing risk to all populations of Lahontan cutthroat trout (especially isolated populations) from severe environmental perturbations (e.g., fire and drought).

If all the landowners return their property to baseline conditions after 30 years, which is not expected, populations are likely to remain within public lands that have become linked due to conservation activities, and within private lands which serve as migration corridors, spawning habitat, and over-wintering habitat. Isolated populations that were part of the baseline will have been utilized for repopulating the networked areas and will still exist.

**3. The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any listed species.**

Issuance of this section 10(a)(1)(A) permit was reviewed by the Service under section 7 of the Act. The Act's legislative history establishes the intent of Congress that this issuance criteria be based on a "no jeopardy" finding pursuant to section 7(a)(2) of the Act and the implementing regulations pertaining thereto (50 CFR 402.02). In the biological opinion, incorporated herein by reference, the Service concluded that the direct and indirect effects of any authorized take are not likely to jeopardize the continued existence of Lahontan cutthroat trout.

Consistent with Safe Harbor Policy, the enhancement of survival permit, through Certificates of Inclusion to landowners, authorizes incidental take of Lahontan cutthroat trout as a result of lawful activities within the enrolled lands. Such take of Lahontan cutthroat trout may result only unintentionally and must occur as incidental to the activities associated with customary management or conservation measures. Monitoring will be used to evaluate Lahontan cutthroat trout through visits to occupied lands at least annually to ascertain Lahontan cutthroat trout presence, aquatic habitat quality, and the efficacy of current

Approval of the proposed SHA will directly contribute to implementation of recovery tasks as outlined in the Lahontan cutthroat trout Recovery Plan (Fish and Wildlife Service 1995). Approval of the SHA is expected to enhance survival and recovery of Lahontan cutthroat trout by increasing the amount of occupied habitat, connecting networked populations, and protecting existing populations. In addition, the SHA fulfills several of the recovery tasks for Lahontan cutthroat trout within the Northwest GMU. The purpose of the SHA is to enhance the reintroduction and long-term conservation of Lahontan cutthroat trout within the Northwest GMU by encouraging private landowners to voluntarily create, enhance, maintain, or restore Lahontan cutthroat trout habitat. Therefore, the SHA will not be in conflict with, but will contribute to ongoing conservation and recovery programs.

**6. The Applicant has shown capability for and commitment to implementing all of the terms of the Safe Harbor Agreement.**

ODFW has shown that they are committed to implementing all of the terms of the proposed SHA. ODFW has worked cooperatively with the Service throughout the entire Safe Harbor Agreement development process. ODFW has been involved in Lahontan cutthroat trout management, restoration and recovery since the early 1970's and developed the "Lahontan Subbasins Fish Management Plan" (Hanson *et al.* 1993) for Oregon. This plan describes objectives for conservation of Lahontan cutthroat trout conservation.

The SHA is a legally-binding agreement assuring the performance of the signatory parties. Performance of the SHA is included as a condition of the permit. Failure to perform these obligations may be grounds for suspension or revocation of the permit. Both the Service and ODFW will work closely with each other to ensure the success of this SHA. It is inherent within the missions of these agencies to work with partners to protect, enhance, and maintain healthy habitats for endangered and threatened species such as Lahontan cutthroat trout.

#### **IV. GENERAL CRITERIA AND DISQUALIFYING FACTORS-ANALYSIS AND FINDINGS**

The Service has no evidence that the permit application should be denied on the basis of criteria and conditions set forth in 50 CFR 13.21(b)-(c). ODFW has met the criteria for the issuance of the permit and approval of the SHA and does not have any disqualifying factors that would prevent the permit or SHA from being approved under current regulations.