

PINE GULCH WATERSHED, MARIN COUNTY
PROGRAMMATIC SAFE HARBOR AGREEMENT FOR
CALIFORNIA RED-LEGGED FROG

1. INTRODUCTION

This programmatic Safe Harbor Agreement (Agreement) is entered into between Marin County Agricultural Commissioner (Program Administrator) and the U.S. Department of Interior, Fish and Wildlife Service (Service); hereinafter collectively called the (Parties). The purposes of this Agreement are: (1) to create additional habitat and enhance existing habitat for the California red-legged frog (*Rana aurora draytonii*) in the Pine Gulch Watershed in Marin County, California and (2) to provide certain regulatory assurances to landowners participating in such habitat creation and enhancement. This Agreement follows the Service's Safe Harbor Agreement policy (FR 64:32717) and regulations (FR 64:32706), which implement this policy.

Upon approval, this Agreement will serve as the basis for the Service to issue an Enhancement of Survival Permit (Permit) under Section 10(a)(1)(A) of the Endangered Species Act (Act). The Permit authorizes the incidental taking of the California red-legged frog associated with creation and enhancement of habitat, routine maintenance and farming activities, and the potential future return of any property subject to a Cooperative Agreement to pre-agreement condition (baseline) after the term of this Agreement expires. Under this Agreement, the Program Administrator will issue Certificates of Inclusion to property owners (Cooperators) whose property is subject to a Cooperative Agreement (Enrolled Property). Cooperative Agreements shall be effective upon the signing thereof by the Cooperators and the Program Administrator. Certificates of Inclusion issued by the Program Administrator will extend incidental take coverage conferred by the Permit to the Enrolled Property. Cooperators agree to carry out habitat improvements described in their Cooperative Agreements and to abide by the terms and conditions set forth in this Agreement, the Cooperative Agreement, and the Permit.

2. LIST OF COVERED SPECIES

This Agreement covers the federally threatened California red-legged frog, which hereafter is referred to as the Covered Species.

3. DESCRIPTION OF COVERED AREA

Pine Gulch Creek is a 7.5 square mile watershed located in the western coastal portion of Marin County. Headwaters for Pine Gulch Creek, and 85% of the entire watershed, are located within the boundaries of the Point Reyes National Seashore. Water flows from Pine Gulch Creek into Bolinas Lagoon then out to the Pacific Ocean. The lower reaches of the watershed closest to Bolinas Lagoon are in private ownership. Predominant land use in the privately owned portions of the watershed is annual agricultural production.

The agricultural properties in Pine Gulch Watershed are bordered to the north by Point Reyes National Seashore (Seashore) and to the east by Golden Gate National Recreation Area. Established in the 1960's, these parks host an impressive array of native flora and fauna. Over 45% of North American avian species, nearly 18% of California's plant species, and twenty-three state and federally threatened and endangered species are found living within the Seashore's boundaries (<http://www.nps.gov/pore/home.htm>). This includes a population of several thousand adult California red-legged frogs and more than 120 active breeding sites (Fellers 2002).

Historically, the western range of California red-legged frog extended along the coast from the vicinity of Point Reyes National Seashore in Marin County and inland from the vicinity of Redding in Shasta County to southern reaches in northwestern Baja California, Mexico. In April 2004, FWS designated Core Recovery Unit 13 for the California red-legged frog, which includes watersheds within and adjacent to Point Reyes, Tomales Bay and Bolinas Lagoon, which includes the Pine Gulch watershed. This recovery unit encompasses approximately 200,572 acres; 56% of which is privately owned.

3A. THE PINE GULCH CREEK WATERSHED ENHANCEMENT PROJECT

This Agreement has been developed in conjunction with the Pine Gulch Creek Watershed Enhancement Project. The project, a voluntary and cooperative effort, will modify existing irrigation delivery systems to enhance aquatic habitat for the benefit of the federally listed coho salmon (*Oncorhynchus kisutch*) and steelhead trout (*O. mykiss*), while simultaneously enhancing the area's long-term agricultural sustainability. Under the Enhancement Project, water storage ponds will be built on agricultural properties for the purpose of storing winter water, either diverted from Pine Gulch Creek or captured through sheet flow, for summertime irrigation use. The new water regime will enable the farmers to regulate the amount and timing of pumping from the creek, thus reducing instantaneous withdrawals during the low flow periods. In addition to benefiting listed fish species, these water storage ponds present an opportunity to create high quality wetland/pond habitat ideal for several wildlife species including the California red-legged frog. A complete, detailed analysis of the Pine Gulch Creek Watershed Enhancement Project can be found in the *Water Availability & Cumulative Instream Impact Analysis* (Ketcham 2005).

4. BASELINE DETERMINATION

This Agreement provides a means by which landowners can manage and create habitat for the federally-threatened California red-legged frog without incurring additional regulatory restrictions on the use of their property. The Agreement, however, does not release landowners from the responsibility to avoid take of any listed species already occupying portions of their property. Therefore, any landowner who wishes to enroll his or her property under this Agreement must allow a baseline assessment to be conducted

prior to finalizing the Cooperative Agreement. Baseline assessments shall be undertaken by a qualified person satisfactory to the Service.

For each Enrolled Property, the baseline conditions shall be a description of the quantity, quality, and location of suitable California red-legged frog habitat determined by a survey completed not more than 18 months prior to the final negotiations of the Agreement. This baseline survey should include:

1. A written description of property, including size (in acre feet) and location of existing ponds;
2. A map and written description of suitable of habitat areas for the California red-legged frog, especially areas around existing ponds;
3. Established photo points and photos of suitable of habitat areas for the California red-legged frog

Baseline assessment may also include the following:

1. A complete description of pools, springs, seeps, and other aquatic habitats, including size, maximum depth, presence of aquatic vegetation, amount and location of vegetated perimeter, amount of willow (*Salix* spp.), cattails (*Typha* spp.), and bulrushes (*Scirpus* spp.);
2. The presence of threats to the California red-legged frog, such as bullfrogs, warm water fish species, etc; and,
3. The presence of other amphibians.

In order to receive the assurances regarding take of Covered Species specified in Section 7 of this Agreement, a Cooperator must maintain baseline conditions on the Enrolled Property for the duration of the Cooperative Agreement.

5. MANAGEMENT ACTIVITIES

Each Cooperative Agreement shall specify the restoration, enhancement, and management activities to be carried out on the Enrolled Property to which it applies. These activities shall include those listed as “standard activities” in Exhibit 3 and such “additional activities” listed in Attachment 3 as the Cooperator agrees to implement. The object of such activities will be to create healthy wetland communities associated with water storage ponds on the enrolled properties. The Service has determined that implementation of these activities is expected to produce a net conservation benefit for the Covered Species.

6. NET CONSERVATION BENEFIT

The Service has determined that implementation of this Agreement is reasonably expected to provide a “net conservation benefit” to the Covered Species, because the collective management activities performed by the Cooperator’s pursuant to this Agreement are expected to increase the Covered Species’ population and/or create or

enhance habitat for the Covered Species. The water storage ponds built as part of this Agreement will increase California red-legged frog populations by providing key reproduction habitat within the natural migration corridor of Pine Gulch Creek. Additionally, abundant upland habitat located on adjacent public and private property provides dispersal areas. Research at Point Reyes National Seashore has found that stock ponds, similar to those proposed for construction in Pine Gulch Creek, are commonly used as breeding sites for the California red-legged frog. Data from radio-tagged California red-legged frogs suggests that riparian areas provide critically important resting and dispersal habitats (Fellers 2002).

Specifically, the Agreement supports recovery objective Numbers 4 and 5 listed in the Recovery Plan for the California red-legged frog (USFWS 2002) by restoring habitat through construction, maintenance, and management of ponds within its historical range, removing exotic species as necessary, and protecting these restored sites for a minimum of 10 years. The management activities in the Agreement have been developed to support endangered species recovery actions provided for in the Recovery Plan for the California red-legged frog (USFWS 2002) by protecting suitable habitat and by implementing management plans for habitat. The enrolled properties are located within core area number 13, Point Reyes Peninsula, as described in the Recovery Plan for California red-legged frog. The Point Reyes Peninsula core area was established either because it represents a viable population or because it will contribute to habitat connectivity that will aid species dispersal or because it has potential for population reestablishment or augmentation (USFWS 2002). Implementation of management activities associated with the terms of the Agreement will increase available habitat dispersal opportunities for the California red-legged frog.

7. OTHER RESPONSIBILITIES OF THE PARTIES

A. In addition to entering into Cooperative Agreements (Attachment 1) with willing non-Federal landowners, as described above, the Program Administrator agrees to:

1. Inform the Service promptly of any notification it receives from Cooperators of the latter's intent to make a changes on the Enrolled Property likely to permanently reduce the amount of habitat for California red-legged frog; and
2. Approximately 3 years post pond construction, assess the general condition of California red-legged frog habitat on the Enrolled Property and determine if the habitat is occupied by Covered Species. If frogs are present, no future assessments will be required. If the Covered Species is not present, assessments will be conducted at approximately 3 year intervals until the ninth year after pond construction. Assessments shall be conducted on the Program Administrator's behalf by a qualified entity agreed upon by the Service.
3. Provide the Service with an annual report, due by March 1st of each year in the form attached hereto as Attachment 2;

4. Notify the Service of any transfer of ownership of an Enrolled Property, so that the Service can attempt to contact the new owner, explain the responsibilities applicable to the Enrolled Property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit listed species on the Enrolled Property; and
5. Furnish the Service with copies of all Cooperative Agreements hereunder within 2 weeks after they are signed.

B. In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement, issue to the Program Administrator an Enhancement of Survival Permit (Permit) in accordance with Section 10(a)(1)(A) of the Act, and valid for 30 years authorizing take of the Covered Species as a result of restoration, maintenance, routine activities, and the potential future return of any enrolled land to baseline conditions, provided that such taking shall be consistent with maintaining baseline conditions on the Enrolled Property.
2. Provide to the Program Administrator and Cooperators technical assistance, to the maximum extent practicable, when requested; and provide information on Federal funding programs.

8. COVERED ACTIVITIES

“Covered activities” under this Agreement include any otherwise lawful activities within the enrolled properties that have been restored or enhanced pursuant to this Agreement. “Covered activities” shall include all routine agriculture activities, wherever undertaken. In addition, these activities would include, but not be limited to, the following:

1. Outer banks of dam structure may be planted with annuals and shallow rooted perennials as allowed by pond engineer.
2. Pond plumbing (inlets/outlets) will require occasional maintenance, including pipe repair, clearing blockages, and removing silt, plants (including algae), and trees around the inlet/outlet. Screens, foot-valves, pipes, aeration equipment, and pump/pumping apparatus will be maintained.
3. Silt removal will occasionally be performed when the water is at its lowest level in the fall with a tractor/loader. Silt removal by tractor is anticipated to occur every 5 to 10 years. Prior to silt removal activities, the Cooperators will attempt to either: (1) completely drain the pond(s); or (2) hire a qualified biologist to ensure that no California red-legged frogs are harmed during silt removal activities.
4. Vegetation adjacent to and within pond zone will be mowed and cleared. This includes mowing grass on the outside slope and the top of dikes.

5. Algae will be cleared out of the ponds in the warm season around intake/outlet valves. Algae will be harvested for compost production.
6. Watercress may be cultivated in water that is being transferred into the pond for storage upon arrival.
7. Adjacent roads or roads that are in any way connected to the pond structure will be subject to annual maintenance. This consists of applying and spreading gravel and correcting drainage problems with a tractor.
8. Occasional tree maintenance and removal of fallen trees by owner and contractors of Pacific Gas and Electric Company may be performed.
9. The owner may construct or maintain an existing floating dock for the purpose of supporting pumping equipment for extracting water for irrigation or emergency situations (i.e., fire).
10. Water may be released into spillway watercourses in extreme rain events to manage any possible hydro-related emergencies (i.e., flooding).
11. Grazing of livestock and horses within and adjacent to ponds. Livestock is inclusive of sheep, goats, cattle, and llamas.
12. Recreation activities are permitted adjacent to, and within the pond, including, but not limited to: hunting of deer, rabbit, ducks, quail, dove, pigeon, turkey, etc.; fishing for any game species that may occur in the pond; swimming; boating; picnicking; and bird watching. Target practice may be conducted adjacent to the pond. The owner will take precautions to ensure that California red-legged frogs are not at risk during target practice activities.

9. OTHER LANDOWNERS WHO MAY SECURE INCIDENTAL TAKE AUTHORIZATION

Landowners who own land that abuts and is immediately adjacent to an Enrolled Property may, without committing to undertake any management activities described in Section 5 on such adjoining land, secure the incidental take authority conferred by the permit issued by the Service to the Program Administrator pursuant to paragraph 7, provided: (1) such adjoining landowner enters into a written agreement with the Program Administrator in the form attached hereto as Attachment 5; (2) such written agreement specifies the baseline conditions on such adjoining property; (3) activities resulting in such incidental take are consistent with maintaining the baseline conditions on such adjoining property by a qualified person satisfactory to the Service.

10. AGREEMENT AND PERMIT DURATION

The Agreement becomes effective upon issuance by the Service of the Permit described in Section 7 of this Agreement, and will be in effect for 30 years. Cooperative Agreements developed pursuant to this Agreement will be for a term of at least 10 years. This Agreement and the permit described in Section 7 of this Agreement may each be extended by mutual written consent of the Parties.

11. ASSURANCES OF PROGRAM ADMINISTRATOR REGARDING TAKE OF COVERED SPECIES

Provided that such take is consistent with maintaining Baseline Conditions identified in Section 4 hereof, the Permit referenced in Section 7 of this Agreement shall authorize the taking of the Covered Species incidental to otherwise lawful activities by Cooperators, their employees or agents in the following circumstances:

- A. Implementing the management activities identified in their Cooperative Agreement; or
- B. Making any lawful use of the Enrolled Property after the management activities identified in the Cooperative Agreement has been initiated.
- C. Returning Enrolled Property to Baseline Conditions as provided for in this Agreement.

12. MODIFICATIONS

A. Modification of the Agreement. Either Party may propose amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon the other Parties' written concurrence.

B. Termination of the Agreement. As provided for in Part 12 of the Service's Safe Harbor Policy (FR 64:32717), Cooperators may terminate Cooperative Agreements with the Program Administrator for circumstances beyond his or her control by giving written notice to the Program Administrator. In such circumstances, Cooperators may, pursuant to the permit referenced in Section 7 of this Agreement, return the Enrolled Property to baseline conditions even if the management activities identified in the Cooperative Agreement have not been fully implemented.

C. Permit Suspension or Revocation. The Service or the Program Administrator may suspend or revoke the permit referenced in Section 7 above for a reasonable cause, in accordance with the laws and regulations in force at the time of such suspension or revocation. The Program Administrator or any Cooperator has the right to appeal any suspension or revocation to a mutually agreed upon arbitrator.

D. **Baseline Adjustment.** The baseline conditions for any Enrolled Property may, by mutual agreement of the Parties and the Cooperators, be adjusted if, during the term of the Cooperative Agreement for reasons beyond the control of the Cooperators, the amount of California red-legged frog habitat is reduced from what it was at the time the Cooperative Agreement was signed.

E. **Adaptive management** allows for mutually agreed-to changes to the management activities in response to changing conditions or new information. This approach will be utilized if needed to assure that the project will provide a net conservation benefit for the Covered Species for the duration of the Agreement. Decisions related to adaptive management will be based on the monitoring results and other information in annual reports.

F. **Inability of the Program Administrator to Continue.** If the Program Administrator shall, for any reason, cease to be able to perform its obligations under this Agreement, it shall give written notice of that fact to the Service at the earliest possible time. Upon receiving such notice, the Service may, at its discretion after consultation with Cooperators, either amend this Agreement and the associated permit to substitute a new Program Administrator, or, if Cooperators prefer, convert any previously approved Cooperative Agreement into an individual agreement between the Cooperators and the Service under the same substantive terms.

13. OTHER MEASURES

A. **Remedies.** Each party shall have all remedies otherwise available to enforce the terms of the Agreement and the Permit, except that no party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

B. **Dispute Resolution.** The Parties agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

C. **Succession and Transfer.** As provided in Part 11 of the Service's Safe Harbor Agreement Policy, if Cooperators transfer his or her interest in the Enrolled Property to another non-federal entity, the Service will regard the new owner as having the same rights and responsibilities with respect to the Enrolled Property as the original Cooperators, if the new owner agrees to become a party to the Cooperative Agreement in place of the original Cooperators.

D. **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 Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any

Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

E. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

F. Other Listed Species, Candidate Species, and Species of Concern. In the event that other listed species or species living in riparian or aquatic habitat not initially covered by this Agreement are subsequently listed as threatened or endangered under the Endangered Species Act the Parties agree to amend this Agreement, and all Cooperative Agreements previously approved hereunder, to include such other species as Covered Species. The amendment of any Cooperative Agreement pursuant to this provision shall not change the baseline conditions set forth in such Cooperative Agreement at the time they were executed.

G. Repopulation by Other Listed Species. In the event that other listed species not initially covered by this Agreement are found in residence on the Enrolled Property and all parties agree their occurrence is a result of management activities described in this agreement, the Parties will amend this Agreement and all Cooperative Agreements previously approved hereunder, to include such other listed species as Covered Species. The amendment of any Cooperative Agreement pursuant to this provision shall not change the baseline conditions set forth in such Cooperative Agreement at the time they were executed.

H. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Safe Harbor Program
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit referred to in Section 7 above.

Program Administrator:
Marin County Agricultural Commissioners Office
1682 Novato Blvd. Suite 150-A
Novato, CA 94947

Service:
Safe Harbor Program
Sacramento Fish and Wildlife Office
2800 Cottage Way, Room W-2605
Sacramento, CA 95825

Marin County Agricultural Commissioner

Date

Field Supervisor
Sacramento Field Office
U.S. Fish and Wildlife Service

Date

ATTACHMENT 1

Cooperative Agreement

This is a voluntary agreement that recognizes the unique and important role that private landowners in California can play in helping wildlife valued by the people of California and of the nation. The purpose of the agreement is to enable land management activities beneficial to rare species to be carried out on privately owned land while minimizing the impact of such activities on the right and ability of the owner thereof to use it as he or she wishes. The terms of this agreement are as follows:

1. The Marin County Agricultural Commissioner (Program Administrator) and _____ (Cooperators) have entered into this Agreement to improve habitat for the betterment of wildlife, including the federally threatened California red-legged frog, on certain land owned by the Cooperator that is delineated on the attached map (Exhibit A), and referred to herein as the Enrolled Property.
2. The United States Fish and Wildlife Service (Service) has issued to the Program Administrator a Section 10(a)(1)(A) permit that authorizes, until the year [20..], the incidental taking of California red-legged frogs by Cooperator and other persons who enter into cooperative agreements with the Program Administrator pursuant to the permit.
3. Cooperator agrees to conduct, or allow to be conducted, activities to restore, enhance, or manage riparian and wetland habitat in accordance with the plan set forth in the attached Exhibit B, and maintain such habitat for a minimum period of 10 years from the date of this Agreement.
4. The Cooperator further agrees to provide the Program Administrator with a brief report, due December 31 of the year following the signing of this Cooperative Agreement, and annually thereafter. Such report, in the format shown in Exhibit 4 or in any other simple format to be developed by the Program Administrator, shall identify any management activities undertaken to restore, enhance, or manage native riparian and wetland habitat on the property subject to this Cooperative Agreement, as well as any changes in the extent of riparian and wetland habitat in the preceding year. The Cooperator understands and agrees that the Program Administrator will include these annual reports with the reports that it is required to submit to the Service from time to time.
5. In consideration of the foregoing, the Program Administrator has issued to the Cooperator the attached Certificate of Inclusion under the Program Administrator's permit. This Certificate authorizes the Cooperator and the Cooperator's successors or assigns:
 - a) to take the species identified above incidental to implementing the management activities set forth in this Agreement;

b) after initiation of, and consistent with such management activities, to carry out any other lawful activity that may cause the incidental taking of such species on Cooperator's property, provided that baseline habitat conditions are maintained.

As used in this Cooperative Agreement, "incidental" take refers to the unintentional or unavoidable killing or injuring of the species identified above in the course of carrying out otherwise lawful activities. Nothing in this Cooperative Agreement authorizes Cooperator to capture, collect, or deliberately kill or injure any such species.

6. After the agreed-upon management activities have been initiated, Cooperator agrees to give the Program Administrator at least 90 days notice (except when precluded by emergency situations) prior to management changes which will reduce the amount of baseline habitat on the Enrolled Property and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individuals of the Covered Species from Cooperator's land to avoid their loss.

7. The Cooperator and the Program Administrator agree that a baseline assessment has been conducted in accordance with methods outlined in Section 4 of the Agreement. The results of the baseline assessment are delineated in Exhibit C and shall be considered "baseline conditions" applicable to the property. So long as baseline habitat conditions are maintained, Cooperator may incidentally take the species as provided in Part 5 above. If requested by the Service within 90 days of its receiving a copy of the Cooperative Agreement, the Cooperator agrees to allow the Service access to the enrolled portion of Cooperator's property for the sole purpose of verifying the baseline determination set forth in this paragraph.

8. Successors and assignees may incur the responsibilities and benefits of this Agreement by becoming a party thereto, unless terminated in writing as specified below. If Cooperator decides to sell or otherwise transfer ownership or management of the property, Cooperator agrees to give the Program Administrator notice of such decision prior to the intended sale or transfer and to give the purchaser or transferee notice of this Cooperative Agreement so that the purchaser or transferee can become a party to it if he or she so wishes. Cooperator will inform the Program Administrator in the event all, or part of, the Cooperator's property delineated on the map labeled Exhibit A is transferred to another owner.

9. The Cooperator shall grant the Program Administrator access to Cooperator's property to confirm that the restoration, enhancement, or management activities set forth in Exhibit B have been conducted, and to assess the condition of the habitats being managed under the Cooperative Agreement. The Program Administrator shall give the Cooperator reasonable notice of these visits and shall be accompanied by the Cooperator or an agent of the Cooperator, if the Cooperator so desires.

10. The Cooperator, or the Cooperator's successors or assigns, may terminate the Cooperative Agreement for reasons beyond their control at any time by giving 60 days written notification to the Program Administrator, in which case the Cooperator or the

Cooperator's successors or assigns' right to incidentally take the species under the permit and Certificate of Exclusion shall expire two years after giving such notice. This Cooperative Agreement can be renewed, extended, or modified at any time subject to both the Cooperator's and the Program Administrator's approval. The baseline conditions in any renewal or extension of this Cooperative Agreement shall be the same as set forth in Part 7 above.

11. Cooperator and the Program Administrator agree with respect to liability and indemnification for injuries to persons or property arising out of this Agreement as follows: Cooperator assumes no liability for injury to any employee or representative of Program Administrator in the course of any visit to the property under this agreement. Program Administrator shall not be liable for any damage to the property of the Landowner arising from any visit to the property pursuant to this agreement.

12. So long as the permit and Certificate remain in effect, and provided the management activities required by this Agreement have been carried out, the Cooperator may exercise the right conferred by the Program Administrator's permit and the Certificate to incidentally take the species identified above on the Enrolled Property.

Program Administrator:
Marin County Agricultural Commissioners Office
1682 Novato Blvd. Suite 150-A
Novato, CA 94947

Cooperator:
Name
Address

Program Administrator

Date

Cooperator

Date

Exhibit A

[map of the property subject to the cooperative agreement]

draft

Exhibit B

[specifications for management actions to be carried out]

draft

Exhibit C

[Baseline Conditions]

draft

CERTIFICATE OF INCLUSION

This certifies that the property described as follows [DESCRIPTION], owned by [NAME OF COOPERATOR], is included within the scope of Permit No. ____ issued by the U.S. Fish and Wildlife Service on [DATE] for a period of 30 years to the Marin County Agricultural Commissioner's Office under the authority of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended, 16 U.S.C. 1539(a)(1)(A). Such permit authorizes certain activities by participating landowners as part of a safe harbor program to create and enhance habitat for the California red-legged frog. Pursuant to that permit and this certificate, the holder of this certificate is authorized to engage in activities on the above described property that may result in the incidental taking of such species, subject only to the terms and conditions of such permit and the cooperative agreement entered into pursuant thereto by the Marin County Agricultural Commissioner's Office and [NAME OF COOPERATOR] on [DATE].

Name and Title of Representative
from the Marin County Agricultural Commissioner's Office

Date: _____

Literature Cited

Fellers, G. and G. Guscio. 2002. Red-legged Frog Surveys at Horseshoe Pond, Point Reyes National Seashore. Western Ecological Research Center, U.S. Geographic Survey, Point Reyes, CA. 18 pp.

Ketcham, Brannon, 2005. Pine Gulch Creek Watershed Water Availability & Cumulative Instream Impact Analysis National Park Service, Point Reyes National Seashore, Point Reyes Station, CA. V5.1 + 42pp.

U.S. Fish and Wildlife Service. 1997. Guidance on Site Assessment and Field Surveys for California Red-legged Frogs (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Sacramento, CA. 6 pp.

US Fish and Wildlife Service. 2002. Recovery Plan for the California Red-legged Frog (*Rana aurora draytonii*). US Fish and Wildlife Service, Portland, OR. Viii + 173 pp.

ATTACHMENT 2
Annual Report for
Safe Harbor Agreement between the U.S. Fish and Wildlife Service
and the Marin County Agricultural Commissioner

Permittee's Name: Marin County Agricultural Commissioner

Permit Tracking Number: TE-XXXXXX-0

Location: Pine Gulch Watershed, Marin County, California

Agreement Approved by: California/Nevada Operations Office, U.S. Fish and Wildlife Service

Covered Species: California red-legged frog

Report on the Monitoring Program (1-2 paragraphs): Describe in general terms the results of any assessments carried out pursuant to Section 7.A.2. of the Safe Harbor Agreement in the year covered by the report; append a copy of the report. Describe any major changes in habitat around the ponds included in the baseline. Append to this report copies of all reports submitted to the Program Administrator by Cooperators since the last annual report.

Date Annual Report is Due: On or before March 1, for the prior calendar year

Date Annual Report was Received: _____

Date Annual Report was Reviewed: _____

Signature of Reviewer: _____

Printed Name and Phone # of Reviewer _____

Report on Area wide Management and Conservation Actions (1-2 paragraphs): As necessary to supplement the monitoring reports above, summarize the condition of areas around new and existing water storage ponds on the collective enrolled properties. Describe any apparent year-to-year trends in restoration success in the region. Describe any relevant regional conditions (e.g., drought, flood) that may enhance understanding of the appended annual reports from the Cooperators. Finally, please convey any suggestions for adaptive management of created areas that may have emerged from the program so far.

ATTACHMENT 3 **Management Activities**

Standard Activities

The following management activities shall be included in all Cooperative Agreements:

Pond Installation and Management

- Construct new ponds with a slope of no more than 2:1
- In areas with water diversions or where in stream pumping occurs, intake valves shall have screens smaller than 5 millimeters.
- Ponds shall be designed and managed to be completely drained and remain drained for at least 4 weeks if weather conditions permit.

Controlling Predators and Other Threats

- Prevent knowing introductions of predators such as: bullfrogs, crayfish, mosquito fish, and other fishes.
- Monitor populations of invasive plant species around ponds including: Arundo and Pampas grass. Control if advised.

Minimizing Effects

- Lawful maintenance activities must take place from July 31 through November 30.
- Avoid impacts to riparian habitat especially during winter and early spring.
- Ponds shall be managed in such a manner to be drained by the end of the growing season through the irrigation of crops. Cooperators will allow the ponds to drain to the lowest levels possible every fall.

Although bullfrogs and California red-legged frogs appear to coexist throughout Marin County, it is unclear if this pattern will remain throughout the life of the project. In order to assure the greatest success for the California red-legged frog through this Agreement, completely draining the ponds to reduce bullfrog numbers would be the preferred option. The Service understands that weather conditions in the area or other extenuating circumstances may preclude the ability to successfully drain the ponds completely or for any length of time. Failure to completely drain the ponds through normal draw down will not result in revocation of the permit.

Additional Activities

A Cooperator may elect to include one or more of the following management activities in a cooperative agreement:

Installing Native Vegetation

- Install native riparian vegetation such as: cattails, tules (*Scirpus* spp.) and horsetails (*equisetum* spp.) around ponds for use by California red-legged frogs for shade, foraging and attaching egg masses.
- Plant native perennial grasses around ponds and waterways.
- Plant willows (*Salix* spp.), cattails (*Typha* spp.), or bulrushes (*Scirpus* spp.) in deeper areas to shade the water and keep it cool.

Upon 3 year review after pond installation, activities under Installing Native Vegetation may be required as a Standard Activity.

If ponds have not been successfully drained for the required time by the biological monitoring at year 3 post construction, and negative results are found by these surveys, then the Administrator and the Service will explore options to ensure project success.

ATTACHMENT 4
Annual Report from Cooperator to Program Administrator

Directions: Take a walk around your ponds and observe the overall condition of vegetation in and around the ponds. You may wish to have your baseline maps and pond designs handy for reference and a camera for taking photos. Explanations can be brief (one or two sentences).

At the discretion of the Program Administrator, you may substitute this form for a monitoring report provided to you by a biologist or restoration professional familiar with the California red-legged frog.

Assessment of Habitat Conditions

1. In a few sentences please describe the general condition of the newly installed ponds on your property. Include information about plant location, composition and density, condition of banks, a description of the water level and clarity.
2. Provide photographs taken from established photo points to show annual changes in or around the irrigation ponds. These locations should be marked for reference on Exhibit B and should remain the same from year to year.
3. In a few sentences please describe the general condition of vegetation planted around the ponds. Include information about plant vigor, if they the plants have spread out since last year, how many different kinds of plants are growing, if any have died since last year, and any other relevant or helpful information.
4. Provide photographs taken from several locations to show annual changes in vegetation growing around irrigation ponds. These locations should be marked for reference on Exhibit B and should remain the same from year to year.

Condition of Other Native Plants and Areas around Irrigation Ponds

5. Has the extent of the area that supports California red-legged frog changed within the past year? For example, has the area expanded naturally or has it markedly decreased due to fire, flood, drought, or other natural disturbance?

- Expanded _____
- Decreased _____
- Stayed the same _____

Please explain briefly the extent and causes of any noticeable increase or decrease.

6. Did non-native grasses or other invasive species

- Spread _____
- Degrade or dominate portions of the native plantings _____
- Remain about the same _____

Please describe any action you took to control the spread of non-natives.

Management Activities

7. Please describe any maintenance work associated with the irrigation ponds that took place around the ponds this past year?
8. Please list which month each of the activities took place in.
9. Have you heard or seen any evidence of California red-legged frog predators such as bullfrogs, crayfish, mosquitofish, and other fishes in or around your pond?
10. Did you completely drain your pond this year? If so, in which month?

draft

ATTACHMENT 5
Neighboring Landowner Agreement

1. [Owner] owns land (hereafter “the Property”) in Marin County, California, that is designated on the attached map and that is adjacent to land enrolled in the Programmatic Safe Harbor Agreement between the Marin County Agricultural Commissioner’s office and the United States Fish and Wildlife Service (hereafter “the Service”), dated [date]. The Programmatic Safe Harbor Agreement, and the permit issued by the Service to the Marin County Agricultural Commissioner’s Office in connection therewith, authorizes participating landowners who enter into cooperative agreements to build and maintain water storage ponds on land enrolled in the program and to take endangered California red-legged frog incidental to farming, ranching, and other lawful activities on the enrolled land, provided that baseline habitat conditions as specified in such cooperative agreements are maintained.

2. The Marin County Agricultural Commissioner’s Office serves as the Program Administrator of the foregoing Programmatic Safe Harbor Agreement, and as such is authorized by that Agreement to enter into both cooperative agreements with landowners who enroll land in the Programmatic Agreement, and similar Neighboring Landowner Agreements with landowners who own land adjacent to land enrolled in the Agreement. Such Neighboring Landowner Agreements confer upon such neighboring landowners the same rights to take endangered species incidental to lawful activities on such neighboring land, subject to requirements as are set forth in this Agreement, as cooperative agreements confer upon landowners who enroll land in the Programmatic Agreement. The Marin County Agricultural Commissioner’s Office has determined that the “baseline conditions” applicable to the Property are as follows:

1. A written description of property, including size (in acre feet) and location of existing ponds;
2. A map and written description of suitable of habitat areas for the California red-legged frog, especially areas around existing ponds;
3. Established photo points and photos of suitable of habitat areas for the California red-legged frog.

Baseline assessment may also include the following:

1. A complete description of pools, ponds, springs, seeps, and other aquatic habitats, including size of ponds, maximum depth, presence of aquatic vegetation, amount and location of vegetated perimeter, amount of willow (*Salix* spp.), cattails (*Typha* spp.), and bulrushes (*Scirpus* spp.);
2. The presence of threats to the California red-legged frogs, such as bullfrogs, warm water fish species, etc; and
3. The presence of other amphibians.

So long as at least baseline conditions for the California red-legged frog remain in the same on the Property, [owner] may incidentally take the Covered Species in the course of

any lawful use of the property, subject to Section 4 below. As used herein, “incidental” take refers to the unintentional or unavoidable killing or injuring of California red-legged frog in the course of carrying out otherwise lawful activities. Nothing herein authorizes [Owner] to capture, collect, or deliberately kill or injure any such frogs.

4. [Owner] agrees to give the Marin County Agricultural Commissioner at least 90 days notice (except when precluded by emergency situations) prior to commencing any management activity likely to reduce the baseline conditions on the Property, and to allow the Program Administrator or the Service the opportunity to rescue and relocate any individual California red-legged frogs and translocate frogs from the Property to avoid their loss.

5. This Neighboring Landowner Agreement remains in effect until the expiration of the Programmatic Safe Harbor Agreement between the Service and the Marin County Agricultural Commissioners Office on [date].

[Owner]

Date

Marin County Agricultural Commissioner’s Office

Date