

# SAFE HARBOR AGREEMENT

**FOR CALIFORNIA RED-LEGGED FROG (*Rana draytonii*),  
AT SWALLOW CREEK RANCH,  
SAN LUIS OBISPO COUNTY, CALIFORNIA**

Prepared by

Swallow Creek Ranch

and

U.S. Fish and Wildlife Service,  
Ventura Fish and Wildlife Office

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# SAFE HARBOR AGREEMENT SWALLOW CREEK RANCH

## 1.0 INTRODUCTION

This safe harbor agreement (Agreement) is made and entered into as of January 2012, between Duane Waddell, owner of Swallow Creek Ranch (Landowner), and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereafter collectively referred to as the “Parties” or singularly as “Party.” The purpose of this Agreement is to (1) maintain, and potentially increase, population numbers of the federally threatened California red-legged frog (*Rana draytonii*); and (2) maintain, enhance, and restore habitat for the California red-legged frog on lands owned and managed by the Landowner. This Agreement follows the Service’s safe harbor agreement policy (64 Federal Register (FR) 32717) and regulations (50 CFR 17.32(c)) and implements the intent of the Parties to follow the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act).

Safe harbor agreements encourage voluntary conservation efforts by non-Federal landowners and provide them certainty that future property-use restrictions will not be imposed if those efforts attract covered species to their properties or result in increased numbers or distributions of covered species already present. In return for voluntary conservation commitments, the safe harbor agreement will extend assurances to the landowner that allows future alteration or modification of the enrolled lands back to pre-agreement conditions (Baseline). This cooperative effort provides landowners with a way to manage enrolled lands to support the conservation of listed species while conducting certain other land-use practices.

The property owned by the Landowner subject to this Agreement is Swallow Creek Ranch, a working cattle ranch specializing in the production of hormone free, grass-fed beef. The ranch is located along the central coast of California approximately 3 miles north of Cayucos, California.

When signed, this Agreement will serve as the basis for the Service to issue the Landowner an enhancement of survival permit under section 10(a)(1)(A) of the Act (Permit), for the incidental take of the species covered in this Agreement while conducting activities associated with the maintenance, enhancement, and restoration of habitat; ranching; and other covered activities, including the potential future return of any enrolled lands to the Baseline condition. The Permit will authorize the Landowner to take individuals of covered species, and their progeny, that are introduced to the enrolled lands or have increased in numbers and/or distribution on those lands above the established Baseline conditions, as a result of these activities. The Parties expect that the maximum level of take authorized under this Agreement and Permit will never be realized. Permit issuance will not preclude the need for the Landowner to abide by all other applicable Federal, State, and local laws and regulations.

## **2.0 SPECIES COVERED BY THIS AGREEMENT**

This Agreement covers the California red-legged frog, which is also referred to in this document as the “Covered Species.” Additionally, through issuance by the Service of an enhancement of survival permit, the Landowner would be provided incidental take coverage for the Covered Species.

Habitat for the California red-legged frog is described in Hayes and Jennings (1988) and the critical habitat rule for the California red-legged frog published on March 17, 2010 (75 FR 12815). Adult California red-legged frogs prefer dense, shrubby or emergent riparian vegetation closely associated with deep (greater than 2.3 feet), still, or slow-moving water (Hayes and Jennings 1988). However, California red-legged frogs also have been found in ephemeral creeks and drainages and in ponds that may or may not have riparian vegetation. Some California red-legged frogs have been found to remain in their breeding pond, while others disperse from their breeding habitat to forage and seek sheltering habitat. Habitat for the California red-legged frog consists of aquatic habitat, upland habitat, and/or dispersal habitat (75 FR 12815). The California red-legged frog requires aquatic habitat for breeding, such as any standing body of freshwater, including natural and manmade (e.g., stock) ponds, slow moving streams or pools within streams, and other ephemeral or permanent water bodies that typically become inundated during winter rains and hold water for a minimum of 20 weeks in all but the driest of years. Non-breeding aquatic habitat includes freshwater habitats that may or may not hold water long enough for the subspecies to hatch and complete its aquatic lifecycle but provides for shelter, foraging, predator avoidance, and aquatic dispersal habitat for juvenile and adult California red-legged frogs. This includes plunge pools within intermittent creeks, seeps, quiet water refugia during high water flows, and springs of sufficient moisture to withstand the summer dry period. Upland habitat for the California red-legged frog includes those areas of variable distance from the edge of the riparian vegetation or drip-line surrounding aquatic habitat that provide for shelter, foraging, and predator avoidance. The upland features also maintain hydrologic, geographic, topographic, ecologic, and edaphic features that support the aquatic habitat. Dispersal habitat for the California red-legged frog includes accessible upland or riparian habitat between occupied locations that allows for movement between such sites. Dispersal habitat includes various natural habitats and altered habitats, such as agricultural fields, which do not contain barriers to dispersal. Dispersal distances are typically less than 0.5 mile, with a few individuals moving up to 1 to 2 miles (Fellers 2005). Movements are typically along riparian corridors, but some individuals, especially on rainy nights, move directly from one site to another through normally inhospitable habitats, such as heavily grazed pastures or oak-grassland savannas (Fellers 2005). Dispersing California red-legged frogs in northern Santa Cruz County traveled distances from 0.25 mile to more than 2 miles without apparent regard to topography, vegetation type, or riparian corridors (Bulger et al. 2003).

## **3.0 DESCRIPTION OF ENROLLED PROPERTY**

The property subject to this Agreement (Enrolled Property) is owned and managed by the

Landowner. The Enrolled Property is the 620-acre Swallow Creek Ranch, located near the unincorporated community of Cayucos in San Luis Obispo County, California (Figure 1). The Enrolled Property is located within unit SLO-2 of designated critical habitat for the California red-legged frog (75 FR 12815).

From the late 1800's until the 1960's, Swallow Creek Ranch was the site of a dairy farm. In 1985, the Landowner purchased the property and started a cattle ranch specializing in the production of hormone free, grass-fed beef, which continues today. When the Landowner acquired the property, existing native habitat was in a degraded state. The riparian corridor was nonexistent and non-native grasses dominated the landscape. The Landowner began reestablishing native vegetation at the Enrolled Property over 20 years ago and since that time native habitat for the Covered Species has been reestablished in certain areas of the ranch.

The Landowner encourages wildlife use of the Enrolled Property and supports wildlife at Swallow Creek Ranch by providing breeding and nesting habitat. Swallow Creek Ranch supports a large colony of Monarch butterflies (*Danaus plexippus*) that winter in a eucalyptus grove from December through February, and a population of cliff swallows (*Petrochelidon pyrrhonota*) that migrate from Latin America to nest on the property from March through August.

The vegetation at Swallow Creek Ranch is dominated by a mix of native and non-native grasses on rolling hillsides. A mix of native and non-native trees and shrubs occur along some of the stream banks. Within the ranch, there is one unnamed perennial creek and an approximately 1.75-acre manmade pond that contains still water and reaches a depth of over 20 feet, along with a few smaller drainages that feed the unnamed creek and other drainages in the upper area of the property that flow into an adjacent property (Figure 2). This unnamed perennial creek is referred to as "Swallow Creek" by the Landowner in tribute to the swallows that nest at the Enrolled Property, and will be referenced as such within this Agreement. The manmade pond was designed with areas of shallow water and deep water that enable cattle to access water and the pond without trampling steep banks and causing heavy turbidity. The shallow areas are also important for larval California red-legged frog development, while deeper areas allow escape from predators and refuge from disturbance of shallows. The manmade pond typically contains water all year. Swallow Creek has surface water for all but the driest of years, and contains pools along its length in multiple locations. The Landowner has installed fencing around the manmade pond, along the majority of the length of Swallow Creek, and along a drainage that terminates at the manmade pond and confluence of Swallow Creek.

Native vegetation is being restored along the banks of Swallow Creek and a portion of the manmade pond. Much of the non-native vegetation has been removed over time and has been replaced with native vegetation. The presence of native vegetation along Swallow Creek has reestablished riparian habitat composed of a dense understory of willows (*Salix* spp.), emergent species in slow moving water and pond areas such as willows, bulrushes (*Scirpus* spp.), and cattails (*Typha* spp.), and an overstory of larger trees such as sycamores (*Platanus racemosa*), cottonwoods (*Populus fremontia*), and California bay (*Umbellularia californica*). The manmade

pond supports willows in a few locations along its banks and emergent vegetation in shallow areas.

Suitable habitat for the California red-legged frog occurs within the Enrolled Property. Aquatic breeding and non-breeding habitat occurs at the manmade pond because it contains water all year and along the entire length of Swallow Creek because water is present for more than 20 weeks in a year and vegetative cover is present. Upland habitat occurs immediately adjacent to Swallow Creek because of the presence of dense riparian vegetation and areas that provide cover and escape from predators. Dispersal habitat occurs along the length of Swallow Creek, in the riparian area, and in the adjacent uplands because California red-legged frogs can move between these areas without barriers. California red-legged frogs have been observed at the Enrolled Property in the manmade pond and in multiple pools along Swallow Creek.

#### **4.0 BASELINE DETERMINATION**

This Agreement provides a mechanism for the Landowner to enhance, restore, and manage native riparian habitat for the benefit of the Covered Species without incurring additional regulatory restrictions on the use of the Enrolled Property. The Agreement, however, does not release the Landowner from the responsibility to avoid take of any endangered or threatened species already occupying portions of their property. To receive the assurances regarding take of Covered Species specified in this Agreement, the Landowner must maintain the Baseline conditions on the Enrolled Property.

The California red-legged frog occurs at the Enrolled Property. Because of their cryptic nature and the difficulty in detecting the actual number of California red-legged frogs in each life stage, the Parties have agreed to set the Baseline for the California red-legged frog as the current area of suitable habitat for the California red-legged frog at the Enrolled Property.

Because California red-legged frogs have been observed at the Enrolled Property in the manmade pond and in multiple pools along Swallow Creek; they could also occur in Swallow Creek between these sites in the uplands adjacent to the creek, and they could use the creek and uplands for dispersal. Suitable habitat exists in the manmade pond, along the length of Swallow Creek, and in the adjacent uplands, as identified in Part 3 of this Agreement.

The total area of suitable habitat for the California red-legged frog at the Enrolled Property is the area of suitable aquatic habitat plus the area of suitable upland habitat. The area of suitable aquatic habitat consists of the manmade pond and the area from the pond downstream the entire length of Swallow Creek that occurs within the Enrolled Property. The area of suitable upland habitat consists of the area adjacent to Swallow Creek that includes the riparian vegetation along the length of Swallow Creek and other areas within the fenced area along the length of Swallow Creek that occurs within the Enrolled Property. The Parties have agreed to set the Baseline for the California red-legged frog at the Enrolled Property as this total area of suitable habitat. The Baseline area is 7.2 acres of suitable habitat for the California red-legged frog (Figure 3).

## 5.0 MANAGEMENT ACTIVITIES

The Parties have developed this Agreement to identify activities the Landowner can implement to promote the conservation and recovery of Covered Species. Prior to this Agreement, Swallow Creek Ranch has implemented several components of habitat restoration and enhancement on the Enrolled Property, such as: installing fencing around the manmade pond and along the majority of the length of Swallow Creek to control the access of cattle and prevent cattle from disturbing sensitive habitat; removing non-native vegetation and replanting with native vegetation within the fenced area; and supporting and maintaining riparian vegetation. The completed habitat restoration has resulted in the enhancement and restoration of the riparian corridor resulting in the creation of suitable habitat for the Covered Species.

### Beneficial Management Activities

These management activities would be beneficial to Covered Species because they would maintain, enhance, and/or restore habitat for Covered Species, and would implement other activities beneficial to the conservation and recovery of the Covered Species. Existing suitable habitat for Covered Species will be maintained and enhanced. Additional habitat for Covered Species could be created and restored as resources and funding are available for the Landowner. The Landowner agrees to carry out, and would be covered for, the following management activities at the Enrolled Property.

- The Landowner will maintain the area of California red-legged frog suitable habitat (Figure 3) for the 30-year period of the Agreement, which will allow the potential for the California red-legged frog to increase population numbers and breeding locations at the Enrolled Property.
- Restoration on the 7.2-acre area of suitable habitat for the California red-legged frog will be limited because habitat conditions are already favorable; however, future work over the 30-year period of the Agreement would involve habitat enhancement by removing non-native invasive plants and planting with native species to enhance native vegetation communities. Plant species for revegetation will include willows, sycamores, and cottonwoods, which, as noted above, are types of plants that comprise habitat for the California red-legged frog. Implementation of the restoration is expected to take 5 years from the date this Agreement goes into effect with an additional 5 years of maintenance and monitoring.
- The population of California red-legged frogs at the Enrolled Property will be maintained at its current level for the 30-year period of the Agreement and the Landowner will encourage an increase in the number of individual California red-legged frogs by enhancing pools and/or creating pools within Swallow Creek, as deemed appropriate by the Parties, and as resources and funding are available.

- The manmade pond and grazing at the pond will be managed in a manner to benefit the California red-legged frog for the 30-year period of the Agreement by: deterring cattle access at steep banks, thus reducing trampling of banks and associated turbidity; and allowing cattle to access the pond to graze emergent vegetation and grasses that shade shallow tadpole-rearing areas.
- The fenced drainage that terminates at the manmade pond and confluence of Swallow Creek is a potential restoration site that could provide additional habitat for California red-legged frogs. This drainage will be restored by removing non-native vegetation and planting with native vegetation, as deemed appropriate by the Parties, and as resources and funding are available. Within 10 years after the signing of this Agreement, this drainage will be assessed for feasibility of restoration. This drainage has potential to provide riparian habitat similar to Swallow Creek, although there is no perennial source of water. If restoration at this site is to occur, the Parties would develop a restoration plan within 3 years after the site is assessed that would include an estimated time to complete implementation and a monitoring schedule.
- The Landowner will remove non-native crayfish from the Enrolled Property, and any other non-native species, to reduce predation on California red-legged frog eggs and tadpoles, which could occur multiple times over the 30-year period of the Agreement. This removal of predatory species will occur in coordination with the Service, as deemed appropriate by the Parties, and as resources and funding are available.
- The Landowner plans to host schools and other groups for education and outreach activities, which could occur multiple times per year over the 30-year period of the Agreement. To increase public knowledge and awareness of listed species conservation, these visitors would learn about native and listed species that occur on the Enrolled Property, the habitats where these species occur, and what actions visitors can do to benefit these species. Additionally, visitors would learn how Swallow Creek Ranch performs its function as a working cattle ranch while also providing high value to wildlife. Boardwalks, trails, and/or viewing platforms may be constructed to reduce visitor impact on Covered Species and Covered Species habitat. Sensitive habitat fencing may be erected to reduce impacts from visitors to newly restored areas.

#### Other Management Activities

These management activities relate to the ranching and business activities at Swallow Creek Ranch. The Landowner would be covered in this Agreement for activities associated with the continued use of the Enrolled Property for ranching, group events, and maintenance; provided these activities would not reduce the Landowner's ability to maintain the Baseline conditions. The Landowner's ranching and business activities would be conducted in a way that would not interfere with the implementation of the Beneficial Management Activities described above. The Landowner would be covered in this Agreement for the following activities.

- Ranching and associated activities within and outside of the fenced areas, as the Enrolled Property is used primarily as a natural grass-fed cattle ranch. Ranching and associated activities are covered provided the relevant avoidance and minimization measures below are followed.
- Swallow Creek Ranch hosts occasional group events, such as gatherings for non-profit groups and educational field trips for schools.
- The Landowner plans to host wedding events, primarily during the summer months (May 1 through October 31).

Additional maintenance related activities covered in this Agreement include:

- Grading and re-contouring of the existing access roads within the Enrolled Property, as needed for road maintenance and fire access purposes;
- Fence maintenance;
- Fire clearance, as required by the County of San Luis Obispo;
- Clearing of debris from the manmade pond and Swallow Creek in coordination with the Service, as needed for maintenance purposes;
- Clearing and maintenance of culverts in coordination with the Service; and
- Draining the manmade pond in coordination with the Service, as needed for maintenance purposes.

#### Avoidance and Minimization Measures

The Landowner agrees to implement the following avoidance and minimization measures.

- All cattle will only cross Swallow Creek at a designated area that is fenced and cattle access to the crossing will be controlled.
- Cattle will not be permitted uncontrolled access within the fenced areas around the manmade pond and Swallow Creek. Any cattle access within the fenced area around the manmade pond will be for a brief period for the purpose of providing water to cattle and/or, controlling the growth of emergent vegetation and grasses around the pond.
- Grazing emergent vegetation will not occur from December through April to avoid the California red-legged breeding season (the time when frogs are most likely to occur in shallow areas where emergent vegetation occurs). Deep water will be available as an

escape for any California red-legged frogs that may be present in shallow areas when grazing occurs at other times of the year.

- To avoid and minimize effects to Covered Species, the Landowner will ensure that all gatherings and events will occur outside of Covered Species habitat. Additionally, the Landowner will only host wedding related events during the period of May 1 through October 31 to avoid the majority of the California red-legged frog breeding season and the period when California red-legged frogs are most likely to be actively dispersing across the landscape.
- The Landowner will ensure that all visitors and event attendees will be informed of the presence of any federally listed species that occur on the Enrolled Property and will be informed of areas that provide habitat for listed species. Visitors and event attendees will be instructed to avoid listed species and their habitat.
- The Landowner will not intentionally introduce fish species that could prey upon California red-legged frogs into the manmade pond or Swallow Creek. Prior to introducing any fish species at the Enrolled Property, the Landowner will contact the Service to ensure such species will not adversely affect California red-legged frogs.
- During any maintenance activities, the Landowner, or other associated personnel, will exercise due diligence to avoid negative effects to Covered Species.
- To ensure that diseases are not conveyed between the Enrolled Property and other sites, any persons conducting surveys within suitable habitat for the Covered Species, and using equipment, clothing, and footwear that are not solely dedicated to use at the Enrolled Property, will at all times follow the fieldwork code of practice developed by the Declining Amphibian Populations Task Force.

The Landowner is committed to supporting the presence of Covered Species at the Enrolled Property and will manage and maintain the property to provide benefits to wildlife. Daily ranching and other activities at the Enrolled Property do not typically occur in Covered Species habitat; therefore, disturbance to Covered Species is not likely to occur as a result of daily activities. Additionally, Swallow Creek Ranch is private property and not open to public access. This restricted access also substantially reduces the potential for disturbance to Covered Species and habitat for Covered Species.

The removal of non-native species, the maintenance of suitable habitat, the restoration and enhancement of habitat, and conducting education and outreach activities are recovery actions for the Covered Species, as identified in the recovery plan for the California red-legged frog (Service 2002). Additionally, the Landowner will manage the pond and grazing in a manner to benefit the California red-legged frog by incorporating elements of Appendix D of the recovery plan for the California red-legged frog (Service 2002). Therefore, management activities associated with this Agreement on the Enrolled Property benefit the Covered Species and

contribute to conservation and recovery by: providing areas where suitable habitat for the Covered Species will be maintained or increased in area, and will remain relatively undisturbed; and providing habitat for the Covered Species to increase in population numbers or distribution.

## **6.0 INCIDENTAL TAKE OF COVERED SPECIES**

As used in this Agreement, incidental take refers to the unintentional or unavoidable killing or injuring of individuals of the Covered Species in the course of carrying out otherwise lawful activities. Section 3(19) of the Act defines take to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define harm to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harassment is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Nothing in this Agreement authorizes the Landowner to capture, collect, or deliberately kill or injure any such species.

Safe harbor agreements are written in anticipation that take of the Covered Species and their progeny could occur at some point in the future. Any take that occurs as a result of a reduction in the quality and/or quantity of the established Baseline on the Enrolled Property is not authorized. Under this Agreement, incidental take could occur as a result of the Beneficial Management Activities and the Other Management Activities, described in Part 5 of this Agreement, and as a result of the potential return to Baseline at the termination of the Agreement and its associated Permit. The Landowner may conduct these activities, even if such use results in the incidental take of individual California red-legged frogs covered under this Agreement and as authorized in the Permit.

The Beneficial Management Activities have been developed with intent to increase the number of individuals of the Covered Species occurring at the Enrolled Property, while the Other Management Activities are not anticipated to impede this beneficial contribution to the status of the Covered Species. As the population of Covered Species increases, individuals of the Covered Species may disperse and/or migrate outside of the areas of suitable habitat, which coincides with the Baseline area in Part 4 of this Agreement. The Permit would authorize the Landowner, and persons associated with the Landowner, to incidentally take individuals of the Covered Species and their progeny at the Enrolled Property within and outside of the established Baseline area, as a result of the Beneficial Management Activities and the Other Management Activities. Incidental take of individuals within the established Baseline area cannot reduce the quality and/or quantity of the established Baseline area. Such incidental take of California red-legged frogs on the Enrolled Property could occur as a result of: maintaining, enhancing, and restoring habitat; ranching and associated activities; implementing pond and grazing management activities; conducting education and outreach and associated activities; hosting group events, school field trips, and wedding events; and conducting maintenance activities. As

a result of these activities, incidental take could occur in the form of direct mortality or injury to egg masses, tadpoles, metamorphs, and/or adults through exposure; digging, planting, cutting, or trampling by the Landowner or persons associated with the Landowner; and trampling by cattle. The Permit would provide the Landowner incidental take coverage for a certain number of California red-legged frogs that could be taken as a result of the Beneficial Management Activities and the Other Management Activities at the Enrolled Property, on a per year basis over the 30-year duration. The Permit would further differentiate the authorized incidental take provided to the Landowner into two subsets: authorized incidental take within the Baseline area; and authorized incidental take outside of the Baseline area. Within the Baseline area, the Permit would authorize the incidental take of the following number of California red-legged frogs per year, in the identified life stage, over the 30-year duration: two (2) adults or metamorphs or combination thereof; ten (10) tadpoles; and one (1) egg mass. Outside of the Baseline area, the Permit would authorize the incidental take of the following number of California red-legged frogs per year, in the identified life stage, over the 30-year duration: ten (10) adults or metamorphs or combination thereof. Take of tadpoles and egg masses outside of the Baseline area is not anticipated because all aquatic habitat at the Enrolled Property occurs within the Baseline area; therefore, California red-legged frogs in one of these aquatic life stages would not occur outside of the Baseline area.

The Permit would authorize the Landowner, and persons associated with the Landowner, to incidentally take individuals of the Covered Species and their progeny as a result of activities associated with the return to Baseline conditions. Because the Baseline for the Covered Species on the Enrolled Property has been determined as an area of suitable habitat, which coincides with the Baseline area in Part 4 of this Agreement, activities that would result in a return to Baseline could include those activities that would reduce or remove any additional suitable habitat that has developed over the term of the Agreement, in addition to the Baseline area. Such activities could include bulldozing, discing, and/or compacting soil. Incidental take of California red-legged frogs could occur, as a result of the return to Baseline conditions on the Enrolled Property, in the form of direct mortality or injury of California red-legged frogs through exposure, habitat loss, disturbance, displacement, or trampling by the Landowner or other associated personnel. The Permit would authorize the incidental take of all California red-legged frogs outside of the Baseline area that could result from activities associated with the return to Baseline. The Permit would not authorize incidental take of California red-legged frogs within the Baseline area based on activities associated with the return to Baseline.

The Parties expect that the maximum level of take authorized under this Agreement and Permit will never be realized because the Landowner will implement the avoidance and minimization measures in Part 5 of this Agreement to reduce the likelihood that take would occur. Additionally, the maximum level of take is not expected to be realized because, as identified in Part 8 of this Agreement, the Landowner is required to notify the Service of any planned activity that the Landowner reasonably anticipates will result in take of the Covered Species on the Enrolled Property, including a return of the Enrolled Property to the Baseline conditions, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected. Incidental take of California red-legged frogs could occur in the form of capture as a

result of these activities.

Certain activities by the Landowner outside of the identified Baseline area, which will not be considered a limitation on any other activity the Landowner desires to engage in, that may result in incidental take of the Covered Species are: (1) maintenance of drainages and retention basins; (2) trail improvements and maintenance; and (3) remedial actions to protect property from erosion. Incidental take resulting from these activities will be covered under the authorization in the Permit, as discussed above.

## **7.0 NET CONSERVATION BENEFIT**

In accordance with the Service's Safe Harbor Policy (64 FR 32717), "net conservation benefit" means that management activities that are part of the Agreement are expected to provide an increase in the Covered Species' population or distribution, and/or the enhancement, restoration, or maintenance of Covered Species habitat. The net conservation benefit will be sufficient to directly or indirectly contribute to recovery of the Covered Species.

The management activities described in Part 5 of this Agreement have been developed to support the conservation and recovery of the Covered Species. These activities include recovery actions for the Covered Species, as identified in the recovery plan for the California red-legged frog (Service 2002), such as the removal of non-native species, the maintenance of suitable habitat, and the restoration and enhancement of habitat. Additionally, the Service recognizes that education and outreach activities promote the recovery and conservation of listed species. Furthermore, the Landowner will manage the pond and grazing in a manner that is beneficial to the California red-legged frog by incorporating elements of Appendix D of the recovery plan for the California red-legged frog (Service 2002). Therefore, management activities associated with this Agreement would benefit the Covered Species by contributing to Covered Species conservation and recovery. The Service anticipates that implementation of these management activities will produce a net conservation benefit to the Covered Species by:

- Providing areas where existing suitable habitat for the Covered Species will be maintained or increased in quantity.
- Providing areas where suitable habitat for the Covered Species will remain relatively undisturbed.
- Providing habitat for the Covered Species to increase in population numbers or distribution.

These activities will result in habitat protection and insurance against the loss of the Covered Species on the Enrolled Property. The Landowner will manage the Enrolled Property in a manner that is beneficial to Covered Species while conducting ranching and other activities. The net conservation benefit to Covered Species from this Agreement, and thus contribution to

recovery, will remain in place for at least 30 years.

## **8.0 RESPONSIBILITIES OF THE PARTIES**

In addition to carrying out the management activities described in Part 5, the Landowner agrees to:

1. Notify the Service at least 60 days in advance of any planned activity that the Landowner reasonably anticipates will result in take of any individual of the Covered Species on the Enrolled Property, including a return of the Enrolled Property to the habitat Baseline, and provide the Service the opportunity to capture and relocate any individuals that could potentially be affected.
2. Conduct surveys for California red-legged frogs in those areas identified as containing suitable habitat for the California red-legged frog (Figure 3) as follows. These surveys will include monitoring of the Baseline conditions for the California red-legged frog described in Part 4 of this Agreement. Due to Landowner funding constraints, when possible, the Service will assist in these surveys; however, Service agreement to assist is limited by its authorities and appropriated funds, as stated in Part 12.D of this Agreement.
  - Surveys will be conducted at least once during the period of March 1 to June 15 during the year following the signing of the Agreement and Permit and then once every 5 years during the same period for the remainder of the Agreement.
  - If additional suitable habitat for the California red-legged frog is established after restoration work has been completed, surveys will be conducted in the newly established habitat as described above.
  - The results of these surveys, including whether any California red-legged frogs were observed or heard, and the species of all frogs detected, will be reported to the Service.
3. The Landowner will monitor the implementation and progress of the management activities described in Part 5 of the Agreement, and provide the Service with the status of these activities in an annual report.
4. Allow reasonable access by the Service or another agreed-upon party onto the Enrolled Property for purposes related to this Agreement, including verification of the identification of any frogs using voluntarily established or enhanced habitats, and capture and relocation of California red-legged frogs.
5. Notify the Service 60 days prior to the transfer of ownership so that the Service can attempt to contact the new owner, explain the Baseline responsibilities applicable to the

Enrolled Property, and seek to interest the new owner in signing the existing Agreement or a new one to benefit Covered Species on the Enrolled Property.

6. Report to the Service any dead, injured, or ill specimens of the Covered Species observed on the Enrolled Property. Upon locating a dead or injured Covered Species, the Landowner will notify the Ventura Fish and Wildlife Office (2493 Portola Road, Suite B, Ventura, California, 93003; (805) 644-1766) by telephone within 3 working days of its finding. The verbal notification must include the date, time, location, cause of injury or death if known, and any other pertinent information. An email message or written report containing the details from the verbal notification must be sent to the Ventura Fish and Wildlife Office with this information and, if possible a photograph, within 3 weeks of its finding. The person to whom the message is sent, and corresponding email address if applicable, would be determined at the time of the phone call.
7. Provide the Service with an annual report (Attachment 1), due November 1 of each year for the prior calendar year. The report will describe any habitat restoration activities and any substantial change in condition of previously established habitat for the Covered Species that occurred during the previous year, any observations of the Covered Species by the Landowner during the previous year, the status of implementation of the management activities described in Part 5 (and number 3 above), and any incidental take of a Covered Species that has occurred.

In consideration of the foregoing, the Service agrees to:

1. Upon execution of the Agreement and satisfaction of all other applicable legal requirements, issue a Permit to the Landowner, authorizing incidental take of the Covered Species as a result of lawful activities on the Enrolled Property in accordance with the terms of such Permit. The duration of the Agreement will be 30 years. The Permit may extend for an additional 2 years beyond the 30-year duration of the Agreement, provided that prior to or upon expiration of the Agreement the Service determines that the conservation actions identified in the Agreement have been implemented and the Landowner need not perform additional conservation activities on the property. If extended under the conditions above, the duration of the Permit will be 32 years.
2. As appropriate, provide the Landowner with a determination that they have satisfied the conservation measures within 1 year of the expiration of the Agreement.
3. Provide the Landowner with technical assistance when requested, and provide information on Federal funding programs for wildlife habitat improvement including those for threatened and endangered species.
4. Monitor use of the voluntarily established or enhanced habitats by the Covered Species, if the Service determines that such monitoring is needed.

## **9.0 AGREEMENT AND PERMIT DURATION**

This Agreement becomes effective upon issuance of the Permit by the Service. The Agreement will be in effect for 30 years. If the Service determines that the conservation actions identified in the Agreement have been implemented, then the Landowner need not perform additional conservation activities on the property and the Permit may continue in effect following termination of the Agreement for an additional 2 years. In such case, the Permit authorizing incidental take of the California red-legged frog will also be in effect for 30 years from the effective date of the Permit. The additional duration of the Permit following termination of the Agreement will continue Permit coverage for the Landowner for 2 years to allow a return of the Enrolled Property to its Baseline condition. Both the duration of the Agreement and the Permit may be extended upon mutual agreement among the Parties.

## **10.0 ASSURANCES TO THE LANDOWNER REGARDING TAKE OF COVERED SPECIES**

This Agreement will provide the Landowner with assurances that efforts to promote conservation and recovery of the Covered Species on the Enrolled Property will not result in additional restrictions on the use of the Enrolled Property.

The Permit will authorize the Landowner, the Landowner's family members, guests and event attendees on the Enrolled Property, and the Landowner's authorized agents, contractors, or employees to take the Covered Species on the Enrolled Property incidental to the management activities identified in Part 5 of this Agreement, provided that such take is consistent with maintaining the Baseline conditions identified in Part 4 of this Agreement. Additionally, the Permit will authorize the Landowner, the Landowner's family members, and the Landowner's authorized agents, contractors, or employees to take the Covered Species on the Enrolled Property incidental to the return of Enrolled Property to Baseline conditions.

## **11.0 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 the Service's Safe Harbor Policy (64 FR 32717), the Landowner may terminate the Agreement for circumstances beyond the Landowner's control. In such circumstances, the Landowner may return the Enrolled Property to

Baseline conditions even if the net conservation benefit activities have not been fully implemented, provided that the Landowner gives the Service the notification required by Part 8 of this Agreement prior to carrying out any activity likely to result in the taking of the Covered Species. Upon return to Baseline under these circumstances, the Permit will terminate. If the Landowner terminates the Agreement for any other reason, the Permit referenced in Part 8 of this Agreement shall immediately cease to be in effect.

C. Permit Suspension or Revocation. The Service may suspend or revoke the Permit referred to in Part 8 of this Agreement in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service also, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to any of the Covered Species (50 CFR 13.28(a)). In such circumstances, the Service will exercise all possible measures to avoid revoking the Permit.

D. Baseline Adjustment. The Baseline conditions set forth in Part 4 of this Agreement may, by mutual agreement of the Parties, be adjusted if, during the term of the Agreement and for reasons beyond the control of the Landowner, the utilization of the Enrolled Property by the Covered Species or the quantity or quality of habitat suitable for or occupied by the Covered Species is reduced from that present at the time the Agreement was negotiated.

## **12.0 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 Policy (64 FR 32717), if the Landowner transfers their interest in the Enrolled Property to another non-Federal entity, the Service will regard the new owner or manager as having the same rights and responsibilities with respect to the Enrolled Property as the Landowner, if the new owner or manager agrees to become a party to the Agreement in place of the Landowner.

D. Availability of Funds. Implementation of this Agreement by the Service 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. Applicable Laws. All activities undertaken pursuant to this Agreement and its associated Permit must be in compliance with all applicable State, Federal, tribal, and local laws and regulations.

F. Relationship to the Act and other Authorities. The terms and conditions of this Agreement shall be governed by and construed in accordance with the Act and applicable Federal law. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the Act. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government.

G. No Monetary Damages. No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement.

H. 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.

I. Other Listed Species, Candidate Species, and Species of Concern. There is the possibility that other listed, proposed, or candidate species, or species of concern may occur in the future on the Enrolled Property as a direct result of the management actions specified herein. In the event that a non-covered species that may be affected by covered activities becomes listed under the Act, the Landowner and the Service will work together either to amend this Agreement, and the Permit described in Part 8 of this Agreement, to cover such other species or otherwise to confer upon the Landowner similar assurances with respect to such other species as are described above for Covered Species.

J. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the person at the address listed below:

U.S. Fish and Wildlife Service  
2493 Portola Road, Suite B  
Ventura, California 93003  
Attn: Field Supervisor

K. Pursuant to Section 22, Title 41, United States Code, it is further mutually agreed that no member of or delegate to Congress or resident commissioner, after their election or appointment, and either before or after they have qualified and during their continuance in office, shall be admitted to any share or part of the Agreement, or to any benefit to arise thereupon; but this

provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

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.

**U.S. Fish and Wildlife Service**

By: \_\_\_\_\_

\_\_\_\_\_

Date

Field Supervisor, Ventura Fish and Wildlife Office

**Swallow Creek Ranch**

By: \_\_\_\_\_

\_\_\_\_\_

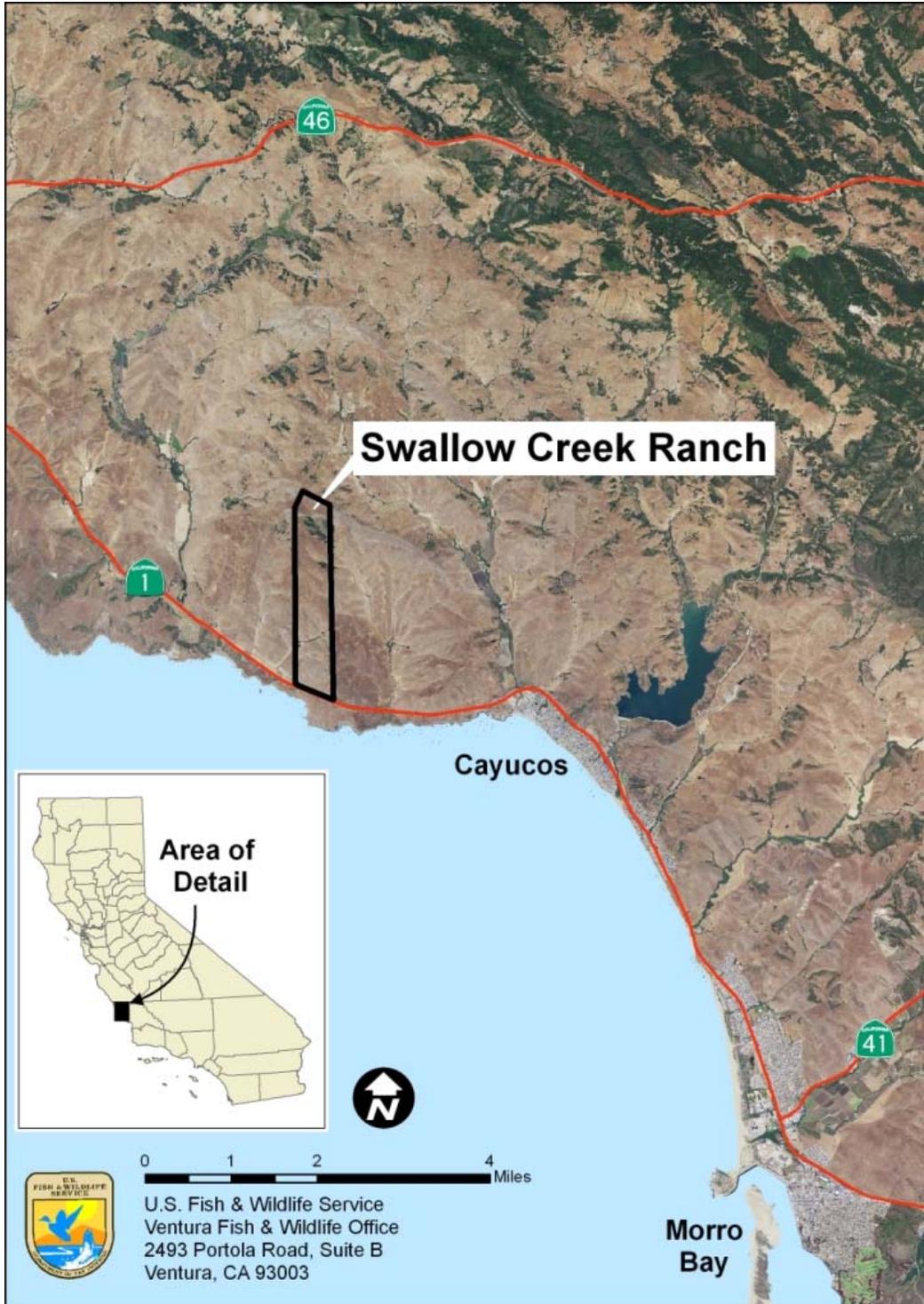
Date

Duane Waddell, owner Swallow Creek Ranch

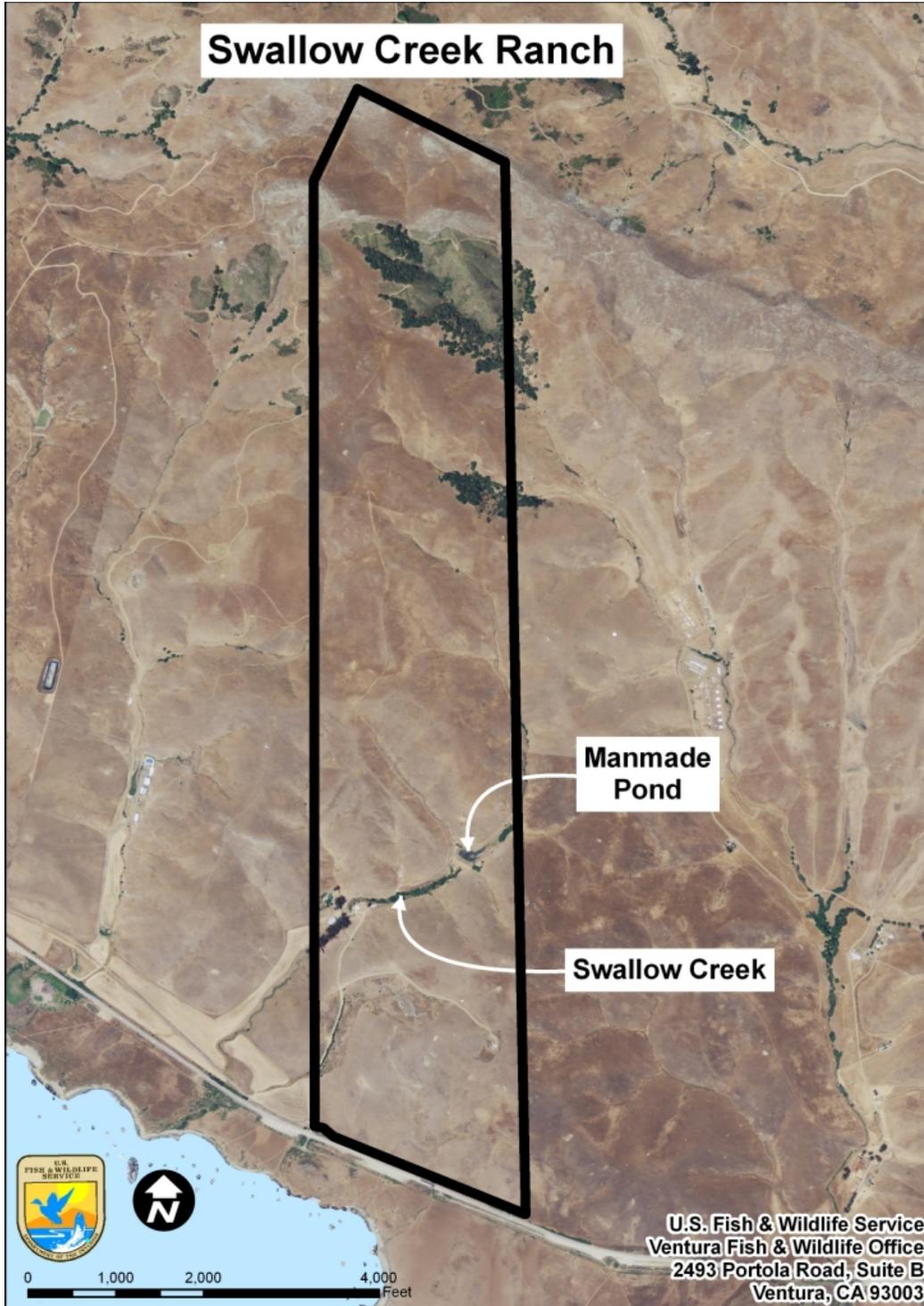
## LITERATURE CITED

- Bulger, J.B., N.J. Scott Jr., and R.B. Seymour. 2003. Terrestrial activity and conservation of adult California red-legged frogs *Rana aurora draytonii* in coastal forests and grasslands. *Biological Conservation* 110:85-95.
- Fellers, G. 2005. *Rana draytonii* Baird and Girard, 1852b California red-legged frog. Pages 552-554 in M. Lannoo (editor). *Amphibian declines the conservation status of United States species*. University of California Press. Berkeley, California.
- Hayes, M.P., and M.R. Jennings. 1988. Habitat correlates of distribution of the California red-legged frog (*Rana aurora draytonii*) and the foothill yellow-legged frog (*Rana boylei*): implications for management. Pages 144-158 in R. Sarzo, K. E. Severson, and D. R. Patton (technical coordinators). *Proceedings of the symposium on the management of amphibians, reptiles, and small mammals in North America*. United States Department of Agriculture, Forest Service, Rocky Mountain Range and Experiment Station, Fort Collins, Colorado. General Technical Report (RM-166):1-458.
- [Service] U.S. Fish and Wildlife Service. 2002. Recovery plan for the California Red-legged frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon. viii + 173 pp.

**Figure 1. Swallow Creek Ranch – Location**



**Figure 2. Swallow Creek Ranch – Property Boundary**



**Figure 3. Swallow Creek Ranch – Area of Suitable Habitat**



**Attachment 1.**

**Annual Monitoring Report for Safe Harbor Agreement  
between the U.S. Fish and Wildlife Service  
and Swallow Creek Ranch**

**Permittee's Name:** Duane Waddell, Swallow Creek Ranch

**Permit Tracking Number:** TE-41549A-0

**Location:** Cayucos, San Luis Obispo County, California

**Agreement Approved by:** Ventura Fish and Wildlife Office

**Covered Species:** California red-legged frog

**Monitoring Program:** Describe in general terms the monitoring program for the current year pursuant to Part 8 of the Safe Harbor Agreement. Annual reports are designed to provide information to the Service concerning the effects and effectiveness of the Agreement's conservation actions on the Covered Species, as well as to determine if the conservation actions the Permittee undertakes meet the Service's Safe Harbor Policy "standard." The monitoring report will document any changes in the condition of individuals of the Covered Species or the habitat associated with Covered Species over time and will denote whether the data provided is from the Permittee, a professional scientist, or other specific individual or entity. Photographs are helpful but may not be required.

**Date Annual Report is Due:** On or before November 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:** \_\_\_\_\_

**Management and Conservation Actions:** Please write a summary of the actions taken to date and the results of the actions taken on each of the management and conservation actions (attach additional pages if necessary).