

Candidate Conservation Agreement with Assurances for Columbian Sharp-tailed Grouse Between the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service

This Agreement, effective and binding on the date of the last signature below, is between the Oregon Department of Fish and Wildlife (ODFW) and the U.S. Fish and Wildlife Service (FWS). Participating property owners may also be included under the Agreement by signing a Certification of Inclusion (Appendix A). Administrators of this Agreement are:

ODFW: Eric V. Rickerson
Upland Game Bird Program Manager
2501 SW 1st Ave.
Portland, Oregon 97207
(503)872-5260 (Phone)
(503)872-5269 (Fax)

FWS: Supervisor, Snake River Basin Office
1387 South Vinnell Way, Room 368
Boise, Idaho 83709
(208)378-5243 (Phone)
(208)378-5262 (Fax)

I. Authorities and Purpose

Sections 2, 7, and 10 of the Endangered Species Act of 1973, as amended (ESA), and the Fish and Wildlife Coordination Act, allows the FWS to enter into this Agreement. Section 2 of the ESA states that encouraging parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs is a key to safeguarding the Nation's heritage in fish, wildlife, and plants. Section 7 of the ESA requires the FWS to review programs that they administer and to utilize such programs in furtherance of the purposes of the ESA. By entering into this Agreement, the FWS is utilizing its Candidate Conservation Programs to further the conservation of the Nation's fish, wildlife, and plants. Lastly, section 10(a) of the ESA authorizes the issuance of permits to "enhance the survival" of a listed species.

The purpose of this Agreement is for the ODFW and the FWS to implement conservation measures for Columbian sharp-tailed grouse (*Tympanuchus phasianellus*) in Wallowa County, northeast Oregon, in support of ODFW's ongoing efforts to reintroduce the species to areas that it historically occupied. The conservation measures would be implemented by the ODFW, FWS, and by Participating Landowners, and would generally consist of continued implementation of ODFW's sharp-tailed grouse reintroduction program and management of sharp-tailed grouse habitat. Consistent with the FWS's Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999), the conservation goal of this Agreement is to encourage development and protection of suitable Columbian sharp-tailed grouse habitat on non-Federal

lands and support the successful reintroduction of the species in Wallowa County. The conservation goal will be met by giving the State of Oregon and private landowners incentives to implement conservation measures and providing landowners with funding and regulatory certainty concerning land use restrictions that might otherwise apply should Columbian sharp-tailed grouse become listed under the ESA. This Agreement could be used as a model for similar agreements for Columbian sharp-tailed grouse in other areas of Oregon.

II. Background and Description of Existing Conditions

The Columbian sharp-tailed grouse is one of six recognized subspecies of sharp-tailed grouse that occur in North America (Miller and Graul 1980). Historically, the Columbian sharp-tailed grouse range extended westward from the continental divide in Montana, Idaho, Wyoming, and Colorado to northeastern California and eastern Oregon and Washington; southward to northern Nevada and central Utah; and northward through central British Columbia.

Columbian sharp-tailed grouse were once more abundant throughout their range where suitable habitats occurred (Hart et al. 1950; Buss and Dzedzic 1955; Washington Division of Fish and Wildlife (WDFW) 1995). Excessive hunting in the mid- to late-19th century is thought to be a major contributing factor to the early extirpation of local populations and the initial reduction of the subspecies' range (Hart et al. 1950). Since the turn of the century, the conversion of native habitats to crop production and their degradation as a result of livestock grazing are thought to be the primary factors in further population declines and range reduction (Hart et al. 1950; Buss and Dzedzic 1955; Miller and Graul 1980; Marks and Marks 1987; Braun et al. 1994; WDFW 1995; McDonald and Reese 1998). Columbian sharp-tailed grouse were extirpated from California in the 1920s, Nevada in the 1950s, and Oregon in the 1960s (Miller and Graul 1980).

Columbian sharp-tailed grouse occupy less than 10 percent of their former range in Idaho, Montana, Utah, and Wyoming; 10-50 percent in Colorado and Washington; and 80 percent or more in British Columbia (USFWS 1999). The range-wide population estimate for the subspecies in 1979 was approximately 60,000-170,000 individuals, with roughly 60-80 percent occurring in British Columbia (Miller and Graul 1980). A current estimate is approximately 34,000-70,000 individuals, with roughly 50-70 percent occurring in Idaho (USFWS 1999).

Three metapopulations of Columbian sharp-tailed grouse currently likely exist--one in northwestern Colorado/south-central Wyoming totaling approximately 6,000-8,000 birds, one in southeastern Idaho/northern Utah totaling approximately 20,000-50,000 birds, and one in central British Columbia totaling 4,500-10,000 birds (USFWS 1999). To varying degrees, other population centers are comprised of both interacting and isolated local populations. These populations include approximately 600 birds in south-central Idaho/northeastern Nevada, a small population of about 50 birds in northeastern Oregon (which are covered by this Agreement), approximately 700 birds occur in scattered small populations in north-central Washington, and two small populations with about 50 birds each in Montana (USFWS 1999).

In 1995, the FWS received a petition to list the Columbian sharp-tailed grouse under the ESA. On October 26, 1999, the FWS found that listing the species may be warranted (USFWS 1999), and initiated a review of the species' status.

Sharp-tailed grouse males employ courtship displays in the spring to attract females to central "dancing grounds," called leks. Established leks may be used for many years, although their exact locations may shift over time and smaller satellite leks often form in the vicinity of historic leks. Females typically nest and rear their broods within 1.6 kilometer (km) (1.0 mile (mi)) of an active lek (Saab and Marks 1992; Giesen and Connelly 1993). Spring-to-fall home range sizes of Columbian sharp-tailed grouse are relatively small, generally less than 2.0 square km (0.8 square mi), and the areas used are usually within a few kilometers of a lek. Seasonal movements to wintering areas from breeding grounds are typically less than 5 km (3.1 mi) (Giesen and Connelly 1993). The area within 2.5 km (1.6 mi) of a lek is believed to be critical to the management of Columbian sharp-tailed grouse and this area should contain, or provide access to, suitable wintering habitats (Saab and Marks 1992; Giesen and Connelly 1993). Because of their importance, leks (including their surrounding area) may be viewed as the principal units affecting the demographics of Columbian sharp-tailed grouse.

Conversion of native habitats, important to Columbian sharp-tailed grouse, to crop production continues (USFWS 1999). Threats to the species also include past and current activities such as rural and suburban development, dam construction, mineral exploitation, chaining, herbicide spraying, and fire (Miller and Graul 1980; Wood 1991; Giesen and Connelly 1993). In addition, grazing practices within portions of the Columbian sharp-tailed grouse range have degraded, or continue to degrade, native habitats (Hart et al. 1950; Miller and Graul 1980; Wood 1992; Giesen and Connelly 1993).

Most of the areas that are currently or may potentially be used by Columbian sharp-tailed grouse occur on privately owned lands (USFWS 1999). Some large portions of these privately owned lands have been withdrawn from crop production and planted to native and non-native cover under the Federal Natural Resources Conservation Service (NRCS) Conservation Reserve Program (CRP), established in 1985 (USDA 1998). CRP lands have become important to Columbian sharp-tailed grouse in Colorado, Idaho, Oregon, Utah, and Washington (USFWS 1999). A number of CRP contracts have expired since 1995, and more are scheduled to expire from now through 2002. While new contracts for CRP lands continue to be accepted and some expired contracts have been renewed, it is unclear what effects these changes have had, or will have, on Columbian sharp-tailed grouse populations (USFWS 1999). If CRP lands important to Columbian sharp-tailed grouse are put back into crop production, adverse impacts to the subspecies' populations will likely occur. In northeast Oregon, a portion of Wallowa County currently supporting a reintroduced population of Columbian sharp-tailed grouse has been designated a Conservation Priority Area by the NRCS under the CRP program in order to benefit the species (Coggins and Matthews 2000).

Reintroduction efforts for Columbian sharp-tailed grouse have occurred in Washington, Montana,

Oregon, and Idaho, and additional reintroduction efforts are planned for California, Oregon, and Washington (USFWS 1999). Early reintroduction efforts have failed to produce self-sustaining populations or increase the size or distribution of augmented populations (Toepfer et al. 1990). However, recent efforts indicate greater potential for success as reintroduction techniques have improved (USFWS 1999).

The larger populations of Columbian sharp-tailed grouse made up of smaller, local breeding populations that have the same genetic and ecological interactions among them are at relatively low risk to single or even multiple altering events (USFWS 1999). However, isolated, local and regional populations could be at risk from naturally occurring random events or human-influenced events. Conservation or reestablishment of these populations may require intensive management efforts (Toepfer et al. 1990).

As noted above, Columbian sharp-tailed grouse were extirpated from Oregon by the 1960's. The species was gone from Wallowa County by the late 1940's, and the last Columbian sharp-tails probably occurred in Baker County, in northeast Oregon (Crawford and Coggins 2000). Reintroduction of Columbian sharp-tailed grouse in Oregon began in 1985 with formation of the Oregon Committee for Reintroduction of Columbian Sharp-tailed Grouse (Crawford and Coggins 2000). In the spring of 1991, 33 Columbian sharp-tailed grouse were released on The Nature Conservancy property at Clear Lake Ridge, in Wallowa County (Crawford and Coggins 2000). Subsequent releases occurred at Clear Lake Ridge in 1992 and 1993. Released grouse dispersed to the Leap Area approximately 20 km west of Clear Lake Ridge during the first two years of the reintroduction. In 1993, 13 birds were released in the Leap Area, and from 1994 through 1997 all releases occurred in the Leap Area. From 1991 through 1997 a total of 179 Columbian sharp-tailed grouse was released in Wallowa County. All birds were wild Columbian sharp-tailed grouse from southeastern Idaho. Surveys in 1998 and 1999 located a total of five active leks in the Leap Area; four leks were used during each year (Crawford and Coggins 2000). A total of 26 grouse were observed at leks in 1998 and 25 were observed in 1999. Summer counts after the brood-rearing period were made: 41 grouse were observed in 1998 and 47 were observed in 1999 in the Leap Area. The ODFW estimates there are likely 50-100 Columbian sharp-tailed grouse currently occupying the Leap Area (Coggins, pers. comm. 2000). Lek and summer surveys during 1998 and 1999 indicate that there is a small, self-sustaining population of Columbian sharp-tailed grouse in Wallowa County as a result of reintroduction efforts, but the population is highly vulnerable to extinction due to low numbers of grouse and restricted distribution (Crawford and Coggins 2000).

The long-term survival of this reintroduced population of Columbian sharp-tailed grouse in Wallowa County is dependent on habitat on private lands. Currently, most or all of the sharp-tailed grouse in Wallowa County are using private agricultural lands in the Leap Area. Upland habitats in the Leap Area are predominately small grain (wheat) and CRP fields interspersed with native grasslands. Larger drainages contain shrubs, trees and other riparian vegetation. Crawford and Coggins (2000) reported that grouse in the Leap Area generally used native grassland habitat for nesting and CRP fields for roosting habitat. Native grasslands were likely enhanced by

surrounding CRP due to restrictions on grazing. During winters with significant snow accumulation, grouse used riparian habitat with woody vegetation. To date, landowners have been supportive of the Columbian sharp-tailed grouse reintroduction program, have cooperated with ODFW, and are providing habitat to support the birds. The ODFW is concerned that, should the species be listed under the ESA, reintroduction efforts, which have established grouse on private lands, would result in land-use restrictions on cooperating landowners. Should this happen, landowners would have no incentive to cooperate in future reintroduction efforts or to provide suitable grouse habitat, in fact they would have an incentive to not provide habitat for the birds. Due to the concern about landowner-ODFW relations, in some other areas of Oregon, ODFW biologists have put Columbian sharp-tailed grouse reintroduction plans on hold pending resolution of the potential ESA listing (Rickerson, pers. comm. 2000). In Wallowa County, the FWS and ODFW are interested in supporting the current reintroduction efforts by implementing this Agreement for a period of 20 years. This Agreement would be implemented by ODFW, with support from the FWS. The Agreement would provide for future support of the sharp-tailed grouse reintroduction program and provide landowners with funding to provide suitable grouse habitat on their land. The Agreement and the associated Enhancement of Survival permit, issued pursuant to section 10(a)(1)(A) of the ESA, would provide Participating Landowners regulatory assurances that should they cooperate and provide suitable Columbian sharp-tailed grouse habitat on their land, they will not incur additional land-use restrictions on their property should the species eventually be listed. Participating Landowners would be included under this Agreement and the associated permit by agreeing to the appropriate terms of this Agreement and the permit by signing a Certification of Inclusion (Appendix A).

III. Planning Area, Covered Area, Enrolled Lands, and Conservation Lands

For purposes of this Agreement, the planning area is the overall area within which it is possible that Columbian sharp-tailed grouse could occur currently or in the future if the reintroduction effort is successful. The covered area is the area within the planning area which is eligible for coverage under this Agreement and within which Participating Landowners may enroll their lands for coverage under the associated permit (Figure 1). In the future, the covered area can be expanded to other parts of the planning area by amendment of this Agreement and the associated permit. The planning area is an approximately 550 square mile area in Wallowa County that encompasses grassland or cropland habitats generally between the town of Wallowa on the west, Dead Horse and Long Ridges on the east, Wallowa lake on the south, and Haskin Butte on the north. The covered area is an approximately 156,000-acre area in Wallowa County, Oregon from the town of Enterprise, the Wallowa River, and the Evans Leap Road on the south and west to Haskin Butte, Chesnimnus Creek, and the Zumwalt-Buckhorn Road on the north and east. Over 99% of this area is private land. The area is comprised of approximately 50% grasslands, 22% dry cropland, 10% CRP, 7% riparian, 6% upland shrub/aspens, 3% irrigated cropland, and 2% forest habitats (Hohmann 2000). Most of the dry cropland and CRP habitats are located in an approximately 36,000-acre area in the western one-quarter of the covered area. This area is identified as the Leap Area (Figure 1), and is where all the currently known Columbian sharp-tailed grouse in Wallowa County are located. The remaining three-quarters of the covered area is

predominately grassland habitat and the predominate agricultural use is livestock grazing. Approximately 50 private landowners own lands within the covered area (Coggins, pers. comm. 2000). The enrolled lands are those lands within the covered area that actually become included under this Agreement and the permit by landowners signing the Certification of Inclusion. The conservation lands are those enrolled lands identified in the Documentation of Participation Form (Appendix C) that provide conservation benefits for Columbian sharp-tailed grouse under this Agreement.

IV. Duration of the Agreement and Permit

This Agreement and the associated permit issued in accordance with section 10(a)(1)(A) of the ESA, would be for a duration of 20 years from the date the Agreement is signed by the ODFW and FWS and the permit is issued by the FWS. The permit will cover Participating Landowners from the date their lands are enrolled under the Agreement until the end of the permit term. Conservation lands will be maintained as suitable sharp-tailed grouse habitat for a period of at least 5 years, as identified by ODFW in the Documentation of Participation form (Appendix C).

Coverage under the permit will only apply to those Participating Landowners who enroll lands under this Agreement prior to any future effective ESA listing date of Columbian sharp-tailed grouse. Future non-enrolled landowners wishing incidental take authorization for Columbian sharp-tailed grouse after any future effective ESA listing date, could apply for authorization through the FWS's Habitat Conservation Plan or Safe Harbor Agreement permitting programs.

V. Conservation Measures and Obligations of the Parties

This Agreement is divided into Phase I and Phase II components. Phase I covers an initial, 2-3 month period where basic information is gathered on grouse occurrence with respect to habitats and individual landowners, and grouse distribution within the covered area. Phase I is intended to provide basic information necessary to support Phase II which is the long-term (20-year) implementation or management phase of the Agreement.

Phase I:

During Phase I, the FWS and ODFW will be responsible for gathering additional information concerning Columbian sharp-tailed grouse distribution within the planning area, and specifically how grouse distribution and anticipated seasonal habitat use corresponds to property owned by individual landowners. This task will likely involve review and updating of the current information on sharp-tailed grouse distribution in Wallowa County, plus additional fieldwork to obtain new grouse distribution and habitat information. The FWS will provide direct funding for this effort as described in part VII. of this Agreement, and ODFW will be responsible for oversight.

Phase II:

Phase II is the 20-year implementation component of the Agreement. The FWS will provide Fiscal Year 2000 funding under the ESA Private Landowner Incentive Funding Program, for a period of up to 5 years post Agreement approval. Additional funding may be available through the Partners of Fish and Wildlife Program. The ODFW will implement and administer the Agreement. Participating Landowners can sign up under the Agreement and be covered under the associated permit through a Certification of Inclusion.

The following Columbian sharp-tailed grouse conservation measures would be provided under the Agreement by the respective parties.

1) Participating Landowners:

- a) Enrollment under the Agreement and coverage of the enrolled lands under the permit would be from the date the Participating Landowner's lands are enrolled under the Agreement until the end of the permit term by signing the Certification of Inclusion (Appendix A).
- b) Conservation lands will be maintained as suitable sharp-tailed grouse habitat for a period of at least 5 years or for such longer period as identified by ODFW in the Documentation of Participation Form (Appendix C) as the "duration of conservation". During this period, the Participating Landowner will provide suitable lek, nest, roost, and/or winter Columbian sharp-tailed grouse habitat on the conservation lands. Suitable habitat is defined as any combination of lek, nest, roost, and/or winter habitat deemed by ODFW at the time of enrollment, to benefit Columbian sharp-tailed grouse and further the sharp-tailed grouse reintroduction effort in Wallowa County. Habitat may be provided by: 1) enrollment of lands in the NRCS CRP program such that grassland habitat suitable for grouse is expected to develop; 2) development of grassland habitat suitable for sharp-tailed grouse; 3) development of riparian or other habitats suitable for sharp-tailed grouse winter habitat; 4) maintenance or enhancement of existing CRP grassland, native grasslands, riparian habitat, or other habitats using fencing, grazing management, or other means necessary to benefit sharp-tailed grouse; or 5) other sharp-tailed grouse habitat protection measures deemed beneficial by ODFW to conservation of sharp-tailed grouse. Lands can be enrolled under the Agreement and the permit whether or not the Participating Landowner receives funding from the ODFW or FWS. See Appendix B for examples. The Documentation of Participation Form will identify, among other things, the suitable sharp-tailed grouse habitat to be maintained on the conservation lands and the duration that this habitat will be maintained.
- c) Allow ODFW personnel access to the enrolled lands for purposes of monitoring sharp-tailed grouse use of the enrolled lands or habitat conditions on the enrolled

lands.

2) ODFW:

- a) Implement and administer this Agreement including: monitoring sharp-tailed grouse distribution and status within the planning area, coordinating private landowner sharp-tailed grouse habitat management efforts, enrolling Participating Landowners under this Agreement using the Certification of Inclusion, additional release of Columbian sharp-tailed grouse if necessary for successful reintroduction of the species, and preparation of required annual reports.
- b) ODFW will complete the Documentation of Participation Form (Appendix C), to document that the landowner's proposed habitat enhancement or protection measures will provide a conservation benefit to Columbian sharp-tailed grouse by providing an adequate quantity and quality of lek, nest, roost, or winter habitat. At least 30 days prior to enrolling Participating Landowners under this Agreement using the Certification of Inclusion, ODFW will provide the completed Documentation of Participation Form to the FWS for concurrence.
- c) Provide necessary ESA Private Landowner Incentive Program funding to landowners in accordance with part VII. of this Agreement.
- d) Prepare annual reports on implementation of the Agreement in accordance with part IX. of this Agreement.

3) FWS:

- a) Provide funding under the ESA Private Landowner Incentive Program for Columbian sharp-tailed grouse habitat conservation and Agreement implementation in accordance with part VII. of this Agreement.
- b) If appropriate, provide funding under the Partners for Fish and Wildlife Program to benefit Columbian sharp-tailed grouse habitat.
- c) Issue a permit to ODFW, under section 10(a)(1)(A) of the ESA, in accordance with 50 CFR 17.32 (d), with a term of 20 years, that would provide the ODFW and Participating Landowners with authorization for incidental take of Columbian sharp-tailed grouse and provide regulatory assurances should the species be listed under the ESA in the future. The permit would authorize incidental take of Columbian sharp-tailed grouse resulting from otherwise lawful agricultural-related activities (on the enrolled lands): crop cultivation and harvesting, livestock grazing, and farm equipment operation.

- d) Within 30 days of receipt of a completed Documentation of Participation Form from ODFW, notify ODFW of the FWS's determination of whether or not the lands should be enrolled, by concurrence or nonconcurrence on the Documentation of Participation Form, concerning the enrollment of the Participating Landowner.
- 4) The Participating Landowner will cooperate with ODFW in completion of the Documentation of Participation Form (Appendix C).
- 5) Those Participating Landowners who receive funding under this Agreement through the ESA Private Landowner Incentive Program will have the following obligations:

In the event the Participating Landowner needs to sell the conservation lands prior to the end of the "duration of conservation" period for these lands under this Agreement, they will notify the FWS at least 60 days in advance of the potential sale, and notify the prospective landowner of the existence of this Agreement (and/or have previously recorded the Agreement) in order for the potential new owner to decide whether to continue this Agreement. In the event the new landowner does not wish to continue this Agreement and request transfer of the permit pursuant to 50 CFR 13.25(b), the Participating Landowner terminates their enrollment under this Agreement for other reasons, or the FWS suspends or revokes the permit, the Participating Landowner that has received FWS funds under this Agreement will reimburse the FWS a pro-rated amount, calculated as: (total funding received ÷ the original "duration of conservation" period from the Documentation of Participation Form) × (the number of years remaining to be completed in the "duration of conservation" period). If the new landowner does not become a party to this Agreement and the permit is not transferred, or a new permit is not issued, he/she will not receive the benefits of the permit authorizing incidental take of Columbian sharp-tailed grouse.

- 6) The FWS provides ODFW and Participating Landowners the ESA regulatory assurances found at 50 CFR 17.32(d)(5). Consistent with the FWS's Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999), conservation measures and land, water, or resource use restrictions in addition to the measures and restrictions described in this Agreement will not be imposed with respect to agricultural activities on enrolled land should Columbian sharp-tailed grouse become listed under the ESA in the future. These assurances are authorized by the enhancement of survival permit issued under section 10(a)(1)(A) of the ESA for the enrolled lands identified in the Certification of Inclusion. In the event of unforeseen circumstances, the FWS will not require the commitment of additional land, water, or other natural resources beyond the level otherwise agreed to for the species in this Agreement without the consent of the ODFW and Participating Landowners. The permit will authorize Participating Landowners to incidentally take Columbian sharp-tailed grouse as long as such take is consistent with

- this Agreement and the associated permit.
- 7) The ODFW or FWS may propose modifications to this Agreement by providing written notice to the other party. Such notice shall include a statement of the proposed modification and the reason for the modification. Proposed modifications will become effective upon the other parties' written approval.
 - 8) The Agreement or permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the FWS's permit regulations. The party proposing the amendment shall provide a statement of the proposed amendment and the reasons for the amendment.
 - 9) The FWS may suspend or revoke the permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation.
 - 10) Each party shall have all remedies otherwise available to enforce the terms of this 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.
 - 11) The FWS, ODFW, and Participating Landowners agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all parties.
 - 12) 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 money from the U.S. Treasury. The parties acknowledge that the FWS 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.
 - 13) 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.
 - 14) The terms of this Agreement shall be governed by and construed in accordance with applicable federal law. Nothing in this Agreement is intended to limit the authority of the FWS to fulfill its responsibilities under federal laws. All activities undertaken pursuant to this Agreement or the permit must be in compliance with all applicable state and federal laws and regulations.

- 15) This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and transferees, in accordance with applicable regulations (currently codified at 50 CFR 13.24 and 13.25) for the duration of the Agreement.
- 16) Any notices or reports required by this Agreement shall be delivered in writing to the Administrators listed on page 1 of this Agreement.

VI. Expected Conservation Benefits

As identified in the FWS's Candidate Conservation Agreement with Assurances Final Policy (USFWS and NMFS 1999), the FWS must determine that the conservation measures and the expected benefits, when combined with those benefits that would be achieved if it is assumed that similar conservation measures were also implemented on other necessary properties, would preclude or remove the need to list Columbian sharp-tailed grouse.

Conservation benefits for Columbian sharp-tailed grouse from implementation of the Agreement are expected in the form of enhancement and restoration of sharp-tailed grouse habitat intended to contribute to an increase and reestablishment of the Columbian sharp-tailed grouse population in Wallowa County. In addition, conservation of sharp-tailed grouse would be enhanced by improving and encouraging cooperative grouse management efforts between the ODFW and FWS, and Participating Landowners who own and control most of the sharp-tailed grouse habitat. Also, this Agreement may be used as a model for agreements in other parts of Oregon to encourage reintroduction and cooperative management of Columbian sharp-tailed grouse in other areas.

In the planning area, native grasslands provide suitable habitat for sharp-tailed grouse nesting and lek sites, particularly when effects of grazing have been reduced by management of adjacent areas as CRP; native grasslands were the most important habitat for sharp-tailed grouse nesting in Wallowa County (Crawford and Coggins 2000). Under the Agreement, Participating Landowners would provide conservation benefits to sharp-tailed grouse by maintaining or enhancing native grasslands by a variety of means. Livestock grazing can be managed to provide for adequate residual grass cover or other factors that would enhance grouse nesting habitat. Native grasslands adjacent to or intermingled with CRP grasslands would be enhanced indirectly by managing grazing or otherwise improving native grasslands as nest or lek habitat. In some cases, areas could be reseeded with grassland species, or protection and enhancement of existing grasslands could occur through fencing or other management techniques.

Enrollment of lands in the CRP program could be a primary reason for the relative success of the Columbian sharp-tailed grouse reintroduction program in Wallowa County to date. CRP grasslands in Wallowa County directly benefit sharp-tailed grouse conservation by providing suitable roosting, lek, and to some extent nesting habitat (Crawford and Coggins 2000). Also, as noted above, CRP provides indirect benefits to grouse by enhancing the suitability of grasslands as nesting habitat.

Under the Agreement, sharp-tailed grouse conservation would be enhanced by providing ESA regulatory assurances such that, should the Participating Landowner already have, or put land into the NRCS CRP Program, and attract sharp-tailed grouse to their property, the landowner will not incur additional land use restrictions. Without regulatory assurances, landowners may be unwilling to include lands in the NRCS CRP Program and attract grouse if they are concerned about future land use restrictions should the species be listed. Also, under the Agreement, a Participating Landowner can be paid for growing other suitable grasslands in areas not eligible for the NRCS CRP Program, but beneficial for sharp-tailed grouse conservation.

During winters when snow depths are low, sharp-tailed grouse in the Leap Area generally appear to use upland areas, feeding in CRP, native grasslands, and harvested wheat fields. However, when snow depths increase, grouse often move into riparian areas with adequate deciduous trees and shrubs for cover and feeding (Coggins pers. comm. 2000). Riparian areas with adequate deciduous vegetation are likely very important wintering habitat for sharp-tailed grouse. Under the Agreement, funding is available for riparian habitat protection and enhancement projects. Landowners could be compensated for fencing riparian areas, or otherwise managing grazing to enhance riparian habitat, and for planting shrubs or trees to enhance recovery of riparian habitat. Compensation could be in the form of funding for fence construction, creation of alternative livestock watering areas, direct compensation for loss or reduced use of an area, or planting riparian shrubs or trees.

In summary, the benefits to Columbian sharp-tailed grouse from conservation measures under the Agreement are expected to occur from enhancement of all types of habitat believed to be important for sharp-tailed grouse in Wallowa County. The combination of these habitat-related benefits with the Agreement's regulatory assurances creating a cooperative relationship with landowners, is expected to result in an overall benefit to sharp-tailed grouse conservation and likely an increase in the grouse population. In order to successfully reintroduce sharp-tailed grouse in Wallowa County, the current population of grouse will have to expand and/or additional birds will have to be released. This will require cooperation from private landowners who own most of the suitable sharp-tailed grouse habitat in Wallowa County. By reducing landowner's regulatory concerns related to the potential listing of Columbian sharp-tailed grouse, cooperation with and support from landowners for expansion of the grouse population should be enhanced. Without the support of private landowners, the sharp-tailed grouse reintroduction effort in Wallowa County will probably not be successful. Ultimately, the Agreement is expected to provide a significant contribution to the successful reintroduction of Columbian sharp-tailed grouse in Wallowa County.

If the level of habitat improvement or protection, and ultimately successful reintroduction of Columbian sharp-tailed grouse, expected under this Agreement were accomplished throughout the range of the species the FWS believes that the need to list the species would likely be precluded or removed. For example, Columbian sharp-tailed grouse populations have been largely extirpated in California and Oregon, and severely reduced in Washington, Montana, Idaho, Wyoming, Utah, and Colorado. By 1980, Columbian sharp-tailed grouse occupied less than 10

percent of their historic range in Idaho, Montana, Utah, and Wyoming, and 10-50 percent in Colorado and Washington. If conservation measures, similar to those in this Agreement, were implemented so that suitable sharp-tailed grouse habitat was provided throughout currently unoccupied areas within the historic range of the species (in the form of CRP or some other habitat restoration effort), and Columbian sharp-tailed grouse were successfully reintroduced in these areas, the need to list the species would be precluded or removed.

VII. Funding

Phase I:

\$5395 Gathering additional information concerning Columbian sharp-tailed grouse distribution within the planning area, and specifically how grouse distribution and anticipated seasonal habitat use corresponds to property owned by individual landowners. The FWS will provide direct funding for this phase and ODFW will provide oversight concerning information collection.

Phase II:

\$50,000 Funding for Agreement implementation and monitoring (\$24,000). Funds for transmitters to monitor grouse populations and habitat use (\$3600). Funding to go directly to landowners or otherwise be used for sharp-tailed grouse habitat enhancement or protection measures (\$22,400), in the manner outlined below. All funding for Phase II will be spent during the first 5 years of the Agreement, unless additional funds are obligated. **The ODFW will have the discretion to prioritize individual habitat conservation projects to best use the limited funds available in Phase II.** The funds itemized in Phase II do not include funding that may be available under the FWS's Partners for Wildlife Program.

- 1) Labor and materials for fencing, providing for alternate livestock watering areas, seeding, purchasing hay, or other land management actions deemed necessary by ODFW and FWS to benefit sharp-tailed grouse habitat. The funding rates would be determined at the time by ODFW and FWS.
- 2) Labor and materials for enhancement of riparian areas by planting riparian shrubs or trees, or other measures deemed necessary by ODFW and FWS. The funding rates would be determined at the time by ODFW and FWS.
- 3) Pay Participating Landowners for growing suitable grasslands in areas not eligible for the NRCS CRP Program. The areas and seed mix to be planted will be identified by ODFW with the intent of benefitting sharp-tailed grouse conservation. The funding rates would be determined at the time by ODFW and FWS.

- 4) Pay Participating Landowners for the costs of deferment or exclusion of grazing or other agricultural activities necessary to protect or enhance sharp-tailed grouse habitat. The compensation rate will be the current lease rate at the time the lands are enrolled under this Agreement or a rate negotiated with ODFW.
- 5) Funding for other, currently unforeseen, sharp-tailed grouse habitat conservation measures deemed by ODFW and FWS to be beneficial to sharp-tailed grouse. The funding rates would be determined at the time by ODFW and FWS.
- 6) Nothing in this Agreement would prevent the ODFW or FWS from obligating additional funding for this Agreement in the future.

VIII. Level of Incidental Take

Should Columbian sharp-tailed grouse be listed under the ESA, authorization for incidental take under the section 10 Enhancement of Survival permit, is limited to agricultural-related activities (crop cultivation and harvesting, livestock grazing, and farm equipment operation) of the Participating Landowners. The level of incidental take can best be described during two periods of time: during the duration of conservation for the lands enrolled under this Agreement, and after the duration of conservation.

During the duration of conservation under the Agreement, incidental take and the resulting effects to sharp-tailed grouse are expected to be minimal. Since grouse habitat protection and enhancement measures will be in place during this period, impacts would be limited to minor disturbance from various agricultural activities or activities related to grouse habitat protection or improvement.

The greatest level of incidental take would likely occur after the duration of conservation period. After the expiration of the duration of conservation period under the Agreement, the Participating Landowner would have no further obligation to maintain the sharp-tailed grouse habitat protection or enhancement measures under the Agreement. As a result, impacts to sharp-tailed grouse could occur in the form of habitat loss. Habitat loss would likely be most significant in CRP habitats, since these areas are the most likely to be converted back to cropland. Impacts to native grassland and riparian habitats important to sharp-tailed grouse would likely be less than in CRP habitat since impacts would be primarily from increased livestock grazing, more subtle than outright habitat conversion, and occur gradually over time. CRP habitat conversion would likely also occur gradually since not all lands would be enrolled under the NRCS program or this Agreement at the same time. Some CRP lands may remain in CRP if the landowner re-enrolls in the NRCS program. Even with this possible level of incidental take, the Agreement will provide substantial benefits to conservation of the species by contributing to the reestablishment of Columbian sharp-tailed grouse in Wallowa County.

The actual level of take of Columbian sharp-tailed grouse is largely unquantifiable. As noted

above most incidental take is expected to occur from the possible eventual conversion of CRP habitat back to crop production. Since there are approximately 16,000 acres of CRP habitat currently in the covered area, a maximum level of incidental take can be estimated by assuming total conversion of these acres to cropland. This is likely a maximum level of impact, and is not expected to occur, since sharp-tailed grouse will not likely occupy the entire area, and because some of these lands may remain in CRP habitat through future re-enrollment in the NRCS CRP Program or a landowners desire to leave the land in grassland. Incidental take of sharp-tailed grouse outside CRP habitat areas would probably be considerably less than within CRP, although the level would be unquantifiable. If incidental take did occur, it would likely be more subtle than in CRP areas and would be gradual over time. Incidental take could occur as a result of grazing practices that modify grassland habitat to an extent that hinders or prevents sharp-tailed grouse nesting activity. This could occur over the grassland habitat in the covered area or approximately 80,000 acres, however, again, this is a maximum level of impact, and is not expected to occur. Grazing practices in the covered area are not expected to degrade habitat on a large scale, since some areas will likely be grazed more intensively than others, and some suitable habitat is expected to occur throughout the area that could support sharp-tailed grouse. Some direct impacts or take could occur from other agricultural-related activities such as farm equipment operation, however, these impacts are expected to be limited and sporadic in nature. Sharp-tailed grouse conservation benefits under the Agreement will likely accrue (and as a result impacts and incidental take will be reduced) well beyond the duration of conservation period especially from habitat enhancement and protection measures related to non-CRP grasslands and riparian habitats. Overall, although impacts and incidental take are expected to occur, especially after the duration of conservation periods expire, impacts are not expected to be great enough to compromise the viability of the sharp-tailed grouse population in Wallowa County should the birds be successfully reintroduced.

Even with the level of incidental take authorized under the permit, the Agreement's conservation goal is expected to be met. Incidental take will likely occur sporadically geographically and temporally, and is not expected to nullify the conservation benefits expected to accrue under the Agreement. Should Columbian sharp-tailed grouse be successfully reintroduced into Wallowa County, the sporadic incidental take that may occur under the permit is not expected to affect the long-term survival of the reintroduced grouse population.

No requirement is made in this Agreement for Participating Landowners to notify the ODFW or FWS prior to any expected incidental take of Columbian sharp-tailed grouse, in order to provide an opportunity to translocate affected grouse. Due to the mobile nature of sharp-tailed grouse, and the relatively small scale nature of individual agricultural activities, grouse are likely to relocate to other areas on their own if displaced. Furthermore, the ODFW or FWS will likely know when a Participating Landowner's activities would displace grouse, and if appropriate, could translocate birds. For purposes of this Agreement, the FWS does not believe that such a notification requirement is practicable nor appropriate.

IX. Monitoring and Reporting

The ODFW will be responsible for annual monitoring and reporting related to the Agreement. Information in annual reports will include, but is not limited to: 1) a summary of Participating Landowners enrolled under the Agreement over the past year including copies of the completed Certification of Inclusion and the Documentation of Participation forms; 2) sharp-tailed grouse habitat management and habitat conditions in the covered area and on all enrolled lands over the past year, including the status of lands where the duration of conservation has expired; 3) effectiveness of sharp-tailed grouse habitat management activities implemented in previous years at meeting the intended conservation benefits; 4) a summary of sharp-tailed grouse population surveys and radio-telemetry studies over the past year; 5) a summary of funds used under the ESA Private Landowner Incentive Program and the Partners for Fish and Wildlife Program; and 6) other information that ODFW deems pertinent to the sharp-tailed grouse reintroduction program. Reports will be due January 1 of each year and a copy will be made available to the Administrators of this Agreement and any Participating Landowners.

X. Literature Cited

- Buss, I.O. and E.S. Dziedzic. 1955. Relation of Cultivation to the Disappearance of the Columbian Sharp-tailed Grouse from Southeastern Washington. *Condor*. 57:185-187.
- Coggins, V. and P. Matthews. 2000. Columbian Sharp-tailed Grouse Project, Wallowa County. Unpublished Progress Report, January 20, 2000. 3p.
- Crawford, J.A. and V.L. Coggins. 2000. The Reestablishment of Columbian Sharp-tailed Grouse Into Oregon. Unpublished Report, January 24, 2000. 80pp.
- Giesen, K.M. and J.W. Connelly. 1993. Guidelines for Management of Columbian Sharp-tailed Grouse Habitats. *Wildl. Soc. Bull.* 21:325-333.
- Hart, C.M., O.S. Lee, and J.B. Low. 1950. The Sharp-tailed Grouse in Utah--Its Life History, Status, and Management. Pub. no. 3, Utah State Dept. of Fish and Game.
- Hohmann, J. 2000. Sharp-tailed grouse in Wallowa County, Oregon - Spring 2000. Unpublished report submitted to the U.S. Fish and Wildlife Service, June 25, 2000. 6pp.
- Marks, J.S. and V.S. Marks. 1987. Habitat selection by Columbian Sharp-tailed Grouse in West-central Idaho. Bureau of Land Management Report, Boise, Idaho. 115 pp.
- McDonald, M.W. and K.P. Reese. 1998. Landscape Changes Within the Historical Distribution of Columbian Sharp-tailed Grouse in Eastern Washington: Is There Hope? *Northwest Bioscience* 72:34-41.

- Miller, G.C. and W.D. Graul. 1980. Status of Sharp-tailed Grouse in North America. Pages 18-28 in P.A. Bohs and F.L. Knopf, eds., Proc. of the Prairie Grouse Symp., Oklahoma State Univ.
- Saab, V.A. and J.S. Marks. 1992. Summer Habitat Use by Columbian Sharp-tailed Grouse in Western Idaho. *Great Basin Naturalist*. 52:166-173.
- Toepfer, J.E., R.L. Eng, and R.K. Anderson. 1990. Translocating Prairie Grouse: What Have We Learned? Trans. 55th N.A. Wildl. and Nat. Res. Conf. 569-579 pp.
- USDA. 1998. The Conservation Reserve Program: 16th Signup. January 29, 1998 Report by the Farm Service Agency. 249 pp.
- U.S. Fish and Wildlife Service. 1999. Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition to List the Columbian Sharp-tailed Grouse as Threatened. Federal Register 64(206): 57620-57623.
- U.S. Fish and Wildlife Service and National Marine Fisheries Service. 1999. Announcement of Final Policy for Candidate Conservation Agreements with Assurances. Federal Register 64(116):32726-32736.
- Washington Department of Fish and Wildlife. 1995. Washington State Management Plan for Columbian Sharp-tailed Grouse (*Tympanuchus phasianellus columbianus*): draft. Game Div., Wash. Dept. Fish and Wildl., Olympia. 94 pp.
- Wood, M.A. 1991. Columbian Sharp-tailed Grouse Mitigation Implementation Plan for Western Montana. Report by the Montana Dept. of Fish, Wildlife, and Parks. 24 pp.
- _____. 1992. Northwest Montana Wildlife Mitigation Program--Habitat Protection Project. Report by the Montana Dept. of Fish, Wildlife, and Parks. 14 pp.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Agreement to be in effect as of the date that the FWS issues the permit.

E.V. Rickson

Upland Game Bird Program Manager
Oregon Department of Fish and Wildlife
Portland, Oregon

Robert W. Gould

OCT 11 2000

Deputy Regional Director
U.S. Fish and Wildlife Service
Portland, Oregon

XI. Appendix

Appendix A.

CERTIFICATION OF INCLUSION

In The

**Candidate Conservation Agreement with Assurances for Columbian Sharp-tailed Grouse
(*Tympanuchus phasianellus*) Between the Oregon Department of Fish and Wildlife and the
U.S. Fish and Wildlife Service**

This certifies that the Participating Landowner of the property described in the Documentation of Participation Form [Attach Completed Form] are included within the scope of Permit No. TE032692-0, issued on (INSERT DATE) to the Oregon Department of Fish and Wildlife (ODFW) 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)(B). Such permit authorizes incidental take of Columbian sharp-tailed grouse by Participating Landowners, as part of a Candidate Conservation Agreement with Assurances (Agreement), to support ODFW's efforts to reintroduce Columbian sharp-tailed grouse into formerly occupied areas. Pursuant to that permit and this certificate, the Participating Landowner is authorized to cause incidental take of Columbian sharp-tailed grouse as a result of agricultural activities identified in section 3.c. of the Agreement on the enrolled lands identified in the Documentation of Participation Form. Permit authorization is subject to carrying out conservation measures identified in the Documentation of Participation Form, the terms and conditions of the permit, and the terms and conditions of the Agreement, entered into pursuant thereto by the ODFW and the U.S. Fish and Wildlife Service. By signing this Certification of Inclusion, the Participating Landowner agrees to carry out all of the conservation measures described in the attached Documentation of Participation Form.

ODFW Representative

Date

Participating Landowner

Date

Appendix B.

EXAMPLES OF SHARP-TAILED GROUSE HABITAT BENEFITS PROVIDED BY PARTICIPATING LANDOWNERS

These examples are intended to illustrate how the habitat conditions on a Participating Landowner's enrolled lands would qualify for enrollment under the Agreement and permit. They are only examples, and are not intended in any way to represent all of the variety of conservation actions that might actually occur. It is important to note that current habitat conditions (e.g. suitable currently enrolled CRP, suitable grasslands, etc.) or habitat in the process of being created or enhanced can qualify for enrollment. It should also be noted that lands can be enrolled under the Agreement and covered under the permit regardless of whether or not the Participating Landowner has received any funding associated with this Agreement. After all funding under the Agreement has been expended, landowners can still enroll suitable lands under the Agreement and be covered by the permit.

Example 1: A Participating Landowner owns 300 acres, and plans on including 150 acres in the NRCS CRP Program. One-hundred twenty (120) acres are native grasslands, are interspersed within the future CRP lands, and would not be grazed during the enrollment period. The remaining 30 acres are in a riparian creek bottom that has potential for grouse winter habitat. The landowner could receive funds under this agreement for habitat improvement in the riparian area such as planting suitable shrubs or trees, fencing the area, compensation for grazing deferment, etc. for an agreed upon period of time (duration of conservation). The landowner would not receive funds under this Agreement for the CRP lands, since funds would be received under the NRCS CRP program. The entire 300 acres would be identified on the Documentation of Participation Form as conservation lands. All 300 acres of enrolled lands would be covered under the permit and the landowner would receive regulatory assurances from the date the lands were enrolled until the 20-year anniversary date of the permit.

Example 2: A Participating Landowner owns 300 acres of land currently in the NRCS CRP program. The landowner would not receive funds under this Agreement for the CRP lands; funds would be received under the NRCS CRP program. The entire 300 acres would be identified on the Documentation of Participation Form as conservation lands. All 300 acres would be covered under the permit and the landowner would receive regulatory assurances from the date the lands were enrolled until the 20-year anniversary date of the permit.

Example 3: A Participating Landowner owns 150 acres of suitable bunchgrass grassland that has not been grazed for years and is excellent sharp-tailed grouse habitat. The landowner agrees to not alter the area (will not graze, cultivate, etc.) for the next 8 years (duration of conservation). The landowner could receive funding under the Agreement at the current lease rate for grazing, and all 150 acres would be covered under the permit from the date the lands were enrolled until the 20-year anniversary date of the permit.

Example 4: A Participating Landowner owns 500 acres, half of which is in wheat cropland and half is grassland that would be excellent grouse habitat if grazing practices were modified. The landowner wishes to continue growing wheat on the 250 acres, and is interested in modifying grazing on the other 250 acres for 15 years (duration of conservation period). The landowner can be compensated under the Agreement for changes in grazing practices on the 250 acres of grassland. All 500 acres could be enrolled under the Agreement and covered under the permit from the date the lands were enrolled until the 20-year anniversary date of the permit. The 250 acres of grassland would be identified as conservation lands on the Documentation of Participation Form and the Participating Landowner would modify grazing practices as identified by ODFW on the Documentation of Participation Form.

Appendix C.

DOCUMENTATION OF PARTICIPATION FORM

A. Participating Landowner's Name and Address: _____

B. Legal Description of Enrolled Lands or Detailed Map with Enrolled Lands Identified: _____

C. Total Acres of Enrolled Lands (all lands covered by permit): _____

D. Legal Description of Conservation Lands or Detailed Map with Conservation Lands Identified:

E. Duration of Conservation (years): _____

F. Sharp-tailed Grouse Benefit on Conservation Lands:

For each applicable category of conservation lands, indicate the amount of habitat (acres), specific conservation/management actions the Participating Landowner will take to benefit sharp-tailed grouse conservation (CRP enrollment, grazing modifications, riparian habitat enhancement, etc.), and the expected sharp-tailed grouse conservation benefits expected from these management actions. The categories of conservation lands are: existing CRP, new CRP, existing suitable grasslands, new suitable grasslands, riparian habitat, other habitat.

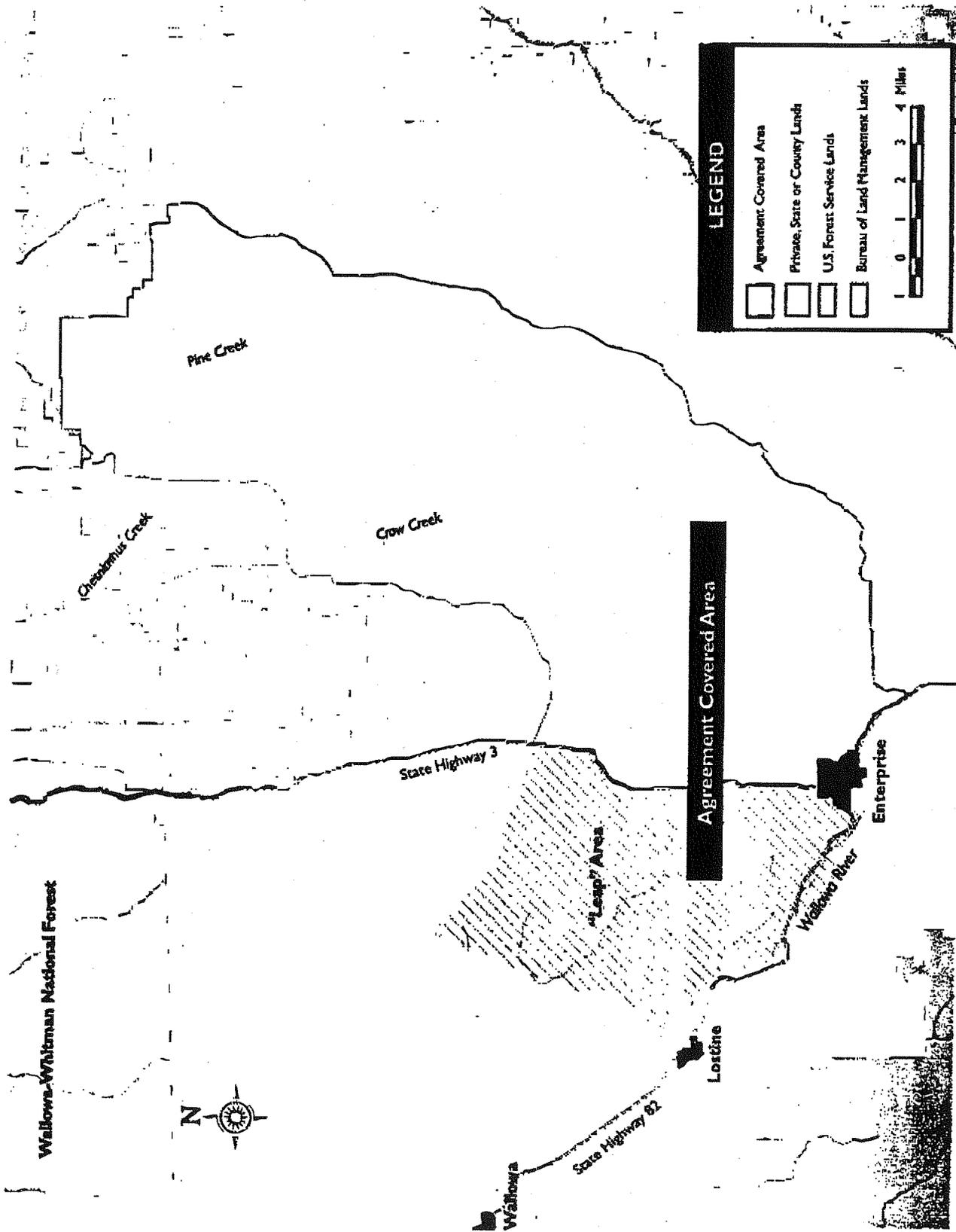


FIGURE 1: Columbian Sharp-tailed Grouse Agreement Covered Area, Wallowa County, Oregon.