

**Programmatic Candidate Conservation Agreement with  
Assurances (CCAA) for the Fisher  
(*Pekania pennanti*) in the State of Washington**

**Between the  
Washington Department of Fish and Wildlife  
and the  
United States Fish and Wildlife Service**

**2016**

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## 1.0 INTRODUCTION AND PURPOSE

### 1.1 PURPOSE

This document is a Programmatic Candidate Conservation Agreement with Assurances (CCAA) for the fisher (*Pekania pennanti*) in the state of Washington. A CCAA is a voluntary agreement whereby landowners agree to manage their lands to remove or reduce threats to a species that may become listed under the Endangered Species Act of 1973, as amended (87 Stat. 884; 16 U.S.C. 1531 et seq.) (ESA). In return for managing their lands to the benefit of the covered species, enrolled landowners receive assurances that additional regulatory requirements pertaining to the covered species will not be required if the covered species becomes listed as threatened or endangered under the ESA so long as the CCAA remains in place and is being fully implemented.

The programmatic design of this CCAA streamlines the process for landowner enrollment, as follows:

- Washington Department of Fish and Wildlife (WDFW) requests that the United States Fish and Wildlife Service (USFWS) issue an enhancement of survival permit (Permit) (50CFR 17.22(d) and 17.32 (d)) pursuant to Section 10(a)(1)(A) of the ESA for a proposed 20 year period covering enrolled properties that fully implement the terms and conditions of this CCAA.
- The WDFW, in coordination with USFWS, will then enroll willing landowners in the CCAA by issuing Certificates of Inclusion (CI) for coverage under the Permit. Certificates of Inclusion will include site specific information describing enrolled lands. While the conservation measures within the CCAA will be implemented upon enrollment, the Permit will go into effect if the fisher is listed under the ESA.

Landowners wishing to enroll in this CCAA must agree to implement the CCAA Conservation Measures (CMs) on enrolled lands to meet the "CCAA Standard" (64 FR 32726, 50CFR 17.22(d)(8)). Because enrollment in the CCAA is voluntary, participating landowners may choose to discontinue their participation at any point. Electing to end participation in the CCAA would terminate any assurances and incidental take coverage otherwise provided under the Permit.

This programmatic CCAA has been developed to achieve three goals:

- Promote conservation measures that reduce or remove threats to fisher in Washington;
- Provide a program of voluntary proactive recovery efforts that deliver conservation benefits intended to meet the USFWS CCAA standard; and,
- Provide enrolled landowners assurances that they will not be held responsible for additional conservation measures or incur additional future regulatory obligations if fisher becomes listed under the ESA, provided that the CCAA is being fully and completely implemented.

While the fisher was extirpated from Washington in the mid-1900s, WDFW has been working with tribal, federal and private partners to recover the species in the state through reintroductions to the Olympic Peninsula and the Cascades Mountain Range. This species is not listed as threatened or endangered under the ESA but is currently a candidate for listing. Therefore, there are no ESA regulations related to fishers currently impacting non-federal lands. WDFW is seeking to utilize the CCAA to facilitate continued successful partnerships with landowners for fisher reintroductions in light of future potential federal listings. Landowners may continue to enroll in this CCAA so long as the CCAA remains in effect and the fisher is not listed as threatened or endangered under the ESA.

## 1.2 CCAA AUTHORITY, STANDARD AND PERMIT ISSUANCE CRITERIA

Section 2 of the ESA states “encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation’s international commitments and to better safeguarding, for the benefit of all citizens, the Nation’s heritage in fish, wildlife, and plants” and that “the purposes of this Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of... treaties and conventions...”.

Section 4 of the ESA outlines guidelines for identifying species that are threatened or endangered. Section 4(h)(3) requires that USFWS establish a ranking system to assist in identifying species that should receive priority review for listing. To fulfill their responsibilities, USFWS developed a program to identify species that warrant protection under the ESA (termed “candidates” or “candidate species”) and to monitor and conserve those species for which protection is deemed appropriate until listing can proceed.

Section 6 of the ESA provides for cooperation between the USFWS and the States in threatened and endangered species conservation. The development of CCAAs requires collaborative stewardship recognizing the statutory role of State agencies, their traditional conservation responsibilities, and authorities for resident species.

Section 7 of the ESA requires USFWS to review programs it administers and to utilize those programs to further the purposes of the ESA. In establishing the CCAA Policy, USFWS utilizes its Candidate Conservation Program to further the conservation of fish and wildlife. By providing assurances to non-federal landowners who are willing to conserve species and their habitats, USFWS is helping to conserve the ecosystems upon which endangered and threatened species depend.

Section 10(a)(1)(A) of the ESA allows USFWS to issue permits for acts that would otherwise be prohibited by Section 9 if such acts are expected to enhance the propagation or survival of the affected species.

When evaluating a CCAA, USFWS must determine that the benefits of the CMs that will be implemented by participating landowners, when combined with those benefits that would be achieved if the CMs were implemented on other necessary properties, would preclude or remove any need to list the covered species (64 FR 32726, 50CFR 17.22(d)(8)). Participating landowners need only address those threats, or the proportion of those threats, that they can control on the properties enrolled in the CCAA.

The WDFW developed this programmatic CCAA with the input of non-federal landowners to address threats to fishers in Washington. This CCAA outlines CMs that enrolled landowners will implement to protect, manage, enhance or augment existing populations, restore populations, or undertake other activities that remove threats to the covered species or otherwise improve the covered species’ status.

Issuance of a Permit requires that USFWS comply with Federal regulatory requirements. Issuance of a Permit is a “Federal action” subject to compliance with the National Environmental Policy Act of 1970 (NEPA), and constitutes an “undertaking” subject to the requirements of Section 106 of the National Historic Preservation Act (NHPA). Permit issuance also requires compliance with the ESA through intra-agency consultation under Section 7 and a determination that criteria for issuance of a CCAA have been satisfied.

To issue the CCAA and its associated enhancement of survival Permit, USFWS must make positive findings for each of the following issuance criteria:

- The take will be incidental to an otherwise lawful activity and will be in accordance with the terms of the CCAA.
- The CCAA complies with the requirements of the CCAA policy.
- The probable direct and indirect effects of any authorized take will not appreciably reduce the likelihood of survival and recovery in the wild of any species.
- Implementation of the terms of the CCAA is consistent with applicable Federal, State, and Tribal laws and regulations.
- Implementation of the terms of this CCAA will not be in conflict with any ongoing conservation programs for fishers.
- Participating landowners have shown capability for and commitment to implementing all of the terms of this CCAA.

### **1.3 ASSURANCES PROVIDED**

Participating landowners will receive assurances that USFWS will not require any additional conservation measures or any additional land, water, or resource use restrictions beyond those voluntarily agreed to and described in the "Conservation Measures" section of this CCAA. These assurances become effective if the fisher is listed as a threatened or endangered species under the ESA during the term of the requested Permit, provided that the CMs and the terms and conditions of the Permit are being fully and completely implemented. Unless otherwise stated, these assurances will be authorized with the issuance of a Section 10(a)(1)(A) Permit to WDFW. Non-federal landowners receive assurances by enrolling in the program, agreeing to implement the CMs described in the CCAA, and executing a CI with WDFW.

### **2.0 DESCRIPTION OF RANGEWIDE STATUS AND THREATS**

The fisher was listed as an endangered species by the state of Washington in 1998 (Hayes and Lewis 2006). On December 5, 2000, the USFWS received a petition to list a distinct population segment (DPS) of the fisher that included portions of California, Oregon and Washington as an endangered species under the ESA. On April 8, 2004, USFWS published a 12-month status review (69 FR 18769) finding that the West Coast DPS of fisher was warranted for listing, but was precluded by higher priority actions. On April 8, 2010, the Center for Biological Diversity challenged the Service's alleged lack of expeditious progress on pending listing proposals, and in particular regarding the west coast DPS of fisher, for species for which the Service had found listing to be warranted but precluded (Center for Biological Diversity v. Salazar (No. 3:10-cv-01501-JCS)(N.D. California)). This challenge was resolved by stipulated dismissal and approved by the court on October 5, 2011, based on the Service's agreement in the context of a larger multidistrict litigation to submit a proposed rule or a not-warranted finding regarding the West Coast DPS of fisher to the Federal Register by the end of Fiscal Year (September 30) 2014 (In re Endangered Species Act Section 4 Deadline Litig., Misc. Action No. 10-377 (EGS), MDL Docket No. 2165 (D.D.C.)). On October 7, 2014, USFWS published a proposed rule (79 FR 60419) to list the West Coast DPS of fisher as threatened under the ESA. In that proposed rule, the USFWS identified habitat loss from wildfire and vegetation management, toxicants (rodenticides), and the cumulative impact and

synergistic effects of these and other stressors in small populations as threats to the continued existence of the West Coast DPS of fisher. Available information on the identified threats, population size, and other factors affecting the West Coast DPS of fisher are available in the Species Report (USFWS 2014a) that was made available at the time of publication of the proposed rule. The USFWS was initially obligated to issue either a final regulation implementing the proposed rule or a notice that the proposed regulation was being withdrawn by October 7, 2015, but the USFWS has subsequently issued a 6-month extension to the final determination based on substantial disagreement regarding available information (80 FR 19953, Docket No. FWS-R8-ES-2014-0041). The USFWS will now issue a final regulation implementing the proposed rule or a notice that proposed regulation was being withdrawn by April 7, 2016.

## 2.1 NATURAL HISTORY

The fisher is one of the larger members of the weasel family (Mustelidae) and occurs exclusively in the boreal and temperate forests of North America. It is dark brown in coloration, and has a long tail, short rounded ears, short legs, and a low-to-the-ground appearance. Females are substantially smaller than males and typically weigh 2.0 to 3.0 kg (4.4-6.6 lb) and measure 70 to 95 cm (28-37 in) in total length, whereas males typically weigh 3.5 to 5.5 kg (7.7-12.1 lb) and measure 90-120 cm (36-47 in) total length (Powell 1993, Lofroth et al. 2010).

The mating season for fishers occurs from late March to early May, when males leave established home ranges to search for reproductive females. Pregnant females can give birth to 1-4 kits from late March to early May and typically mate with a male within 10 days after giving birth. Females exhibit delayed implantation of fertilized eggs, where the development of fertilized eggs is suspended until the start of a 32-day gestation period that can begin as soon as February or as late as April. Birthing dens are always in cavities in live trees or snags (Raley et al. 2012); however, females may subsequently move kits to other den structures including cavities in snags or down logs, or to log piles or ground burrows. Females are responsible for raising kits and they nurse kits until they are approximately 10-weeks old (~ late May). At about 4 months of age (~ late July), kits are more mobile and can travel with their mother. At around 7 months of age (~late October), kits are likely to be independent of their mother but are likely to occupy their mother's home range until they disperse at about 10 months of age (~ late January).

With the exception of breeding males during the breeding season (March to May), fishers typically occupy a home range. Fisher home ranges are large in comparison to other mid-sized carnivores and are dominated by forested habitats. Females commonly use smaller home ranges than males (Lofroth et al. 2010). Mean home range sizes of reintroduced fishers on the Olympic Peninsula were 63.5 km<sup>2</sup> (95% CI = 45.8-81.1) for females and 128.3 km<sup>2</sup> (95% CI = 49.9-238.7) for males (Lewis 2014).

Females are considered adults when they are 1-year-olds because a substantial percentage of these females can become pregnant near their first birthday. Consequently, females can give birth to their first litter at the age of 2. Not all adult females give birth to kits each year. Males are considered adults once they reach 2 years of age, when many males have matured enough to become effective breeders. The average lifespan of fishers is unknown for populations that are not trapped, however the longevity of a wild fisher is not expected to greatly exceed 10 years of age (Powell 1993).

In resident populations, survival rates tend to be greatest for adult females (reported rates from 0.65 to 0.90) and lower for adult males (0.45-0.89) and juveniles (0.27-0.84), however survival rates tend to be lower where fishers are trapped (Lewis 2014). Conversely, annual survival rates were highest for juvenile males (0.61-0.94), lower for adult males (0.50-0.91) and juvenile females (0.40-0.89) and lowest for adult females (0.28-0.84) in the population of fishers reintroduced to Olympic National Park (Lewis

2014). Trapping, predation, vehicle collisions, poisoning, exposure, emaciation/starvation, infections, drowning, fighting among males, accidents, and disease are sources of mortality reported for fishers (Powell 1993, Lofroth et al. 2010). In harvested populations, trapping is typically the greatest source of mortality. Predation and vehicle collisions were the leading causes of mortalities of fishers reintroduced to Olympic National Park (Lewis 2014). Predators of fishers include bobcats (*Lynx rufus*), mountain lions (*Puma concolor*), coyotes (*Canis latrans*), lynx (*Lynx canadensis*), domestic dogs (*Canis familiaris*), and wolverines (*Gulo gulo*) (Powell 1993, Lofroth et al. 2010).

## **2.2 HABITAT ASSOCIATIONS**

### **2.2.1 General**

Fishers use forested habitats and in western North America, fishers are commonly associated with conifer-dominated forests (Lofroth et al. 2010, Raley et al. 2012). The fisher is considered a secretive carnivore because they occur at low population densities, they use dense forests where they are difficult to see, and they avoid humans and developed areas. Because individual fishers require large home ranges and occur at low population densities, areas at the scale of one or more National Forests are likely to be required to support viable fisher populations. Fisher home ranges are commonly found at low and mid-elevations and are frequently dominated by forests with 1) a moderate to dense forest canopy, 2) a mosaic of successional stages, 3) few large openings, 4) complex forest structure, and 5) large woody structures (Lofroth et al. 2010, Raley et al. 2012). Fishers are prey generalists and hunt for prey in a variety of stand types including early, mid, and late successional stands in managed or unmanaged forest landscapes. Conversely, fishers are selective for den site and rest site habitats, and this is related to the availability of large woody structures they commonly use when denning or resting (Raley et al. 2012).

### **2.2.2 Resting and Denning Habitat**

Fishers frequently use large woody structures as rest sites between foraging bouts and as dens for birthing and kit-rearing. These structures include large cavity trees, snags, logs, and log piles which provide security from predators and protection from temperature extremes and inclement weather. These large structures are commonly found in late-successional and unmanaged forests (e.g., National Parks, or wilderness or reserved areas in National Forests). They may also be common in managed forest landscapes that contain late-successional stands or those where large structures are preserved or created (e.g., snag or cavity tree retention, snag or cavity creation).

Females require the security of large woody structures because of their need to protect kits and because their smaller size makes females more vulnerable to other mid-sized carnivores (e.g., bobcats, coyotes). Consequently, females are more likely than males to use home ranges and landscapes dominated by continuous late-successional forests or unmanaged forests because they contain greater quantities of these large structures. Because of their larger size, males are less vulnerable to predation and are better able to exploit managed forests that contain fewer large woody structures and also support greater densities of bobcats and coyotes than unmanaged forests (Lewis 2014).

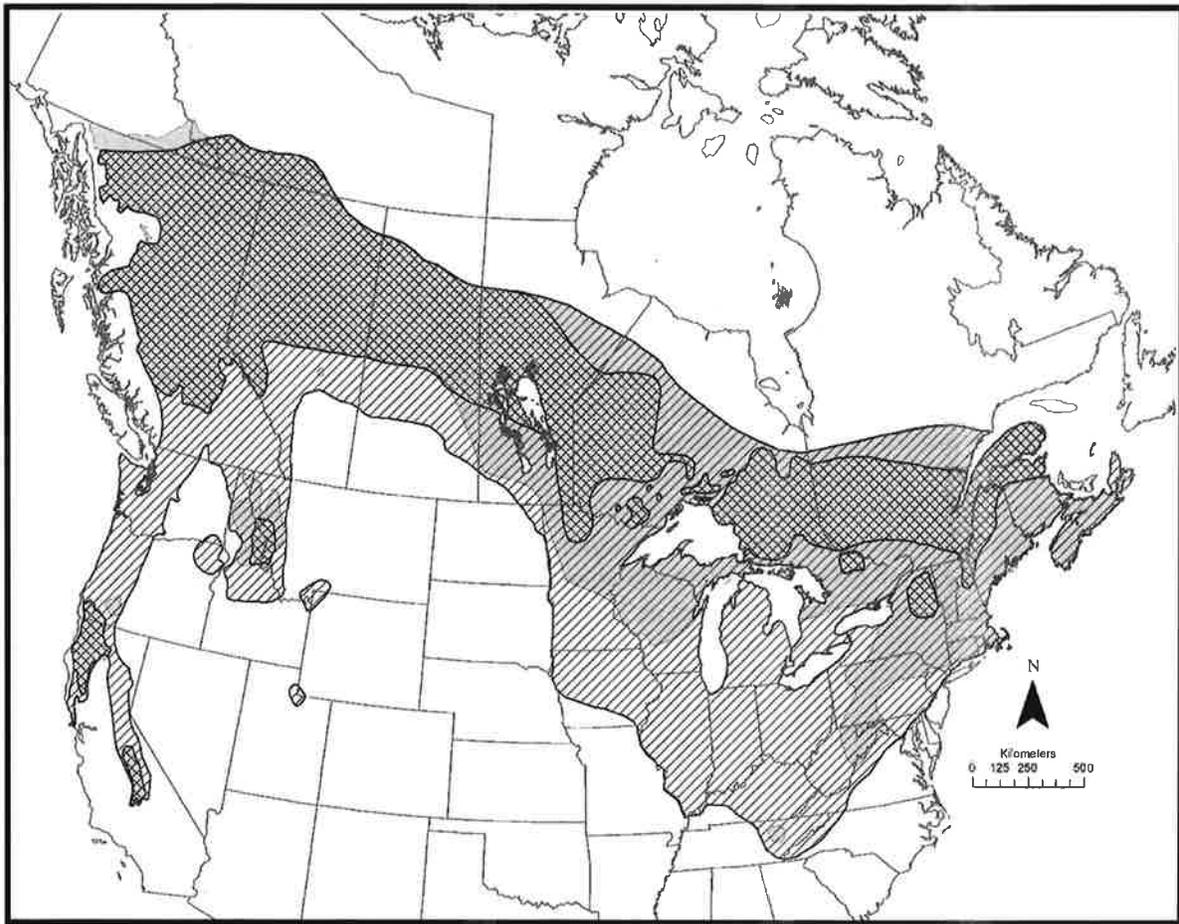
### **2.2.3 Prey**

Fishers are considered prey generalists because they can exploit a variety of prey species to meet their needs. The fisher diet varies by region but typically includes small and mid-sized mammals, ungulate

carrion, insects, birds and fruit (Powell 1993, Lofroth et al. 2010). Mice, voles, shrews, squirrels, rabbits, snowshoe hares (*Lepus canadensis*), and porcupines (*Erethizon dorsatum*) are commonly reported among mammalian prey found in the fisher's diet (Powell 1993, Martin 1994, Weir et al. 2005, Golightly et al. 2006, Lofroth et al. 2010). The mountain beaver may also be an important prey species throughout western Washington as evidenced by fisher predation on mountain beavers on the Olympic Peninsula (Lewis et al. 2010, 2011). Fisher predation on small pets and small livestock has been reported, but these reports are relatively rare occurrences because fishers tend to avoid humans and human developments.

### **2.3 RANGEWIDE DISTRIBUTION**

Historically, the fisher occurred throughout the boreal and temperate forests of North America and its range included southern Canada and most of the northern states as well as peninsular areas that extend south through the eastern states, the northern Rocky Mountains, and the Pacific states (Figure 1). The extirpation of fishers from much of the southern portion of their range that occurred from the late 1800s to the early 1900s resulted in range contraction to ~43% of its historical extent. Efforts to reintroduce fishers in vacant portions of the historical range and improved management of resident fisher populations resulted in fisher recovery and an expansion of the current range to approximately 68% of its historical extent (Figure 1; Lewis et al. 2012).



**Figure 1.** The range-wide distributions of the fisher in North America (modified from Lewis et al. 2012). The historical range is indicated by the diagonal hatching, the most contracted range (~43% of the historical range) by cross hatching and the current range (~68% of the historical range) by the shading.

## 2.4 FACTORS AFFECTING THE SPECIES

When considering if a species is warranted for listing, USFWS assesses the status and threats to a species based on five factors provided in Section 4(a)(1) of the ESA (16 U.S.C. 1533). These five factors were considered when the fisher was proposed in October of 2014 for federal listing as a threatened or endangered species in all or part of its West Coast DPS (USFWS 2014b). Washington's fisher population had been extirpated from the state since the mid-1900s as a result of historical factors that included the overexploitation of fishers for their pelts; mortality as a result of incidental capture, predator control programs, and poaching; and loss and fragmentation of low-elevation forested habitats (Aubry & Lewis 2003; WDFW 1998). WDFW has been working to reintroduce fishers to Washington and relies upon the cooperation and partnerships of federal, state, tribal and private landowners for fisher recovery.

### 3.0 ENROLLED LANDS

Lands eligible for enrollment in this CCAA include state, tribal, non-federal publicly owned, or privately owned forest lands within the historical range of the fisher in Washington (Figures 1 and 2, Table 1), excluding lands in northeastern and southeastern Washington (Figure 1). CCAA management zones were delineated to identify areas where WDFW biologists should conduct outreach to eligible landowners where habitat conditions could support the temporary occupancy or residency of fishers.

Enrolled properties will be described in documentation incorporated into Certificates of Inclusion (CI), and will include maps, figures, township and range, and/or legal descriptions as necessary to clearly delineate the precise boundaries of areas covered. WDFW will maintain an inventory including descriptions of all enrolled properties and provide this information to USFWS as one component of an Annual Report quantifying the amount and location of the enrolled properties.

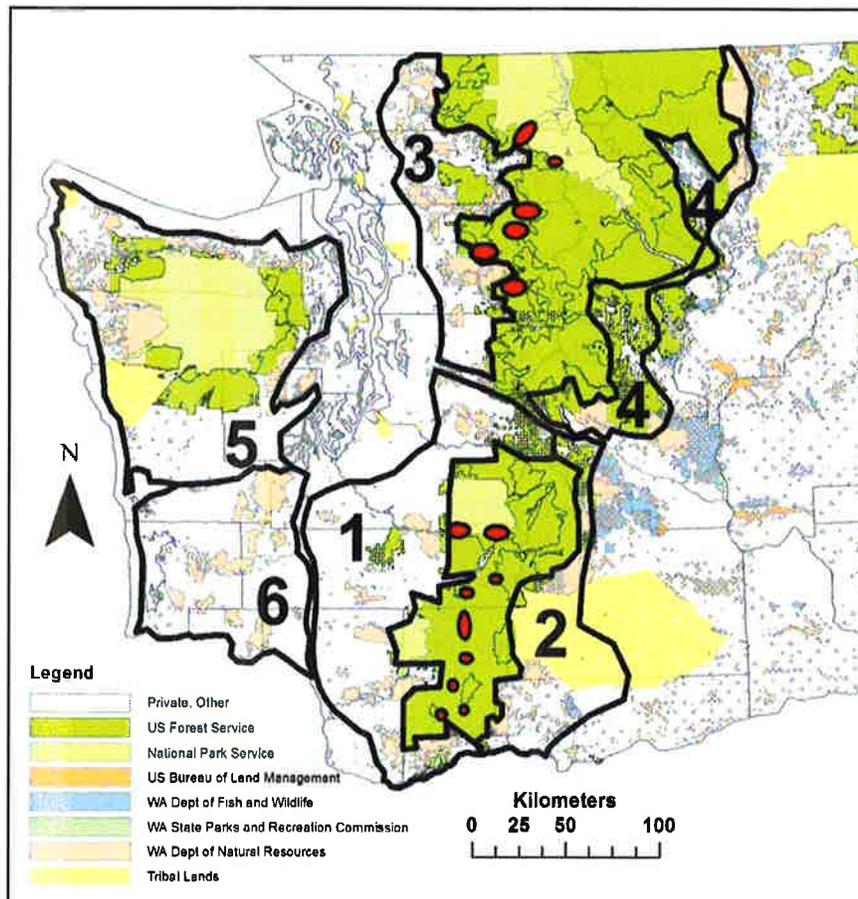


Figure 2. CCAA management zones for fishers in Washington. The red ellipses represent candidate release sites for fishers in the Cascade Mountain Range as outlined in the implementation plan for the proposed Cascade fisher reintroduction (Lewis 2013).

Table 1. Land area (km<sup>2</sup>) in private, public and tribal ownerships within the CCAA management zones in western Washington.

CCAA Zone	Area of interest	Private Lands (km <sup>2</sup> )	Public Lands (km <sup>2</sup> )	Tribal Lands (km <sup>2</sup> )
1	SW Cascades	2,915	8,284	
2	SE Cascades	1,765	1,442	2,076
3	NW Cascades	3,526	2,598	
4	NE Cascades	1,165	3,804	
5	Olympic Peninsula	6,164	8,102	967
6	SW Washington	6,254	1,407	19

### 3.1 DESCRIPTION OF EXISTING CONDITIONS WITHIN THE CCAA AREA

The fisher had become extirpated from Washington by the mid-1900s and was listed as an endangered species by the State of Washington in 1998. Efforts to recover fishers in the state focus on reintroductions on the Olympic Peninsula and the Cascade Mountain Range (Hayes and Lewis 2006). The translocation and release of 90 fishers from British Columbia to the Olympic National Park from 2008 to 2010 initiated reintroduction efforts in the state. Monitoring of these reintroduced populations is currently underway and initial findings suggest that fishers are widely distributed on the Olympic Peninsula and effectively reproducing (Happe et al. 2014; zone 5 in Figure 2). Fishers have not been verified in CCAA management zones 1-4 and 6 (Figure 2), and fishers may not be present in these zones until they are reintroduced in the Cascades Mountain Range.

### 4.0 COVERED ACTIVITIES

The term “covered activities” refers to those activities that may be carried out by participating landowners or their authorized representatives on enrolled lands that may result in incidental take of covered species (e.g. fisher) consistent with the CCAA and the Permit during the term of the CI. Covered activities must be performed in compliance with all applicable Federal, state, and local statutes and regulations (including the Washington State Forest Practice Rules). In this case, covered activities include:

- Ongoing and planned land management practices as defined within the Washington State Forest Practices Act (RCW 76.09.020, Definitions as of February 1, 2015).
- Implementation of conservation measures (Section 5.2) and changed circumstances measures (Section 8.0) described in this CCAA; and
- Inventory and monitoring activities identified in this CCAA (Sections 5.2 and 9.0).

#### Ongoing and planned forest management practices

Activities that are covered by this CCAA and the associated Permit are most land management activities commonly practiced on forest lands, as defined within the Washington State Forest Practices Act as of February 1, 2015.

*"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to the growing, harvesting, or processing of timber, including but not limited to:*  
*(a) Road and trail construction, including forest practices hydraulic projects that include*

- water crossing structures, and associated activities and maintenance;*
- (b) Harvesting, final and intermediate;*
- (c) Pre-commercial thinning;*
- (d) Reforestation;*
- (e) Fertilization;*
- (f) Prevention and suppression of diseases and insects;*
- (g) Salvage of trees; and*
- (h) Brush control.*

*"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources (RCW 76.09.020).*

Additionally, the following activities are covered: transport of timber and rock, site preparation, collection of minor forest products, grazing, fire suppression, and recreation (including legal hunting and trapping<sup>1</sup>). If activities not included above are occurring on lands to be enrolled, non-federal landowners can request that the USFWS determine if they are consistent with the programmatic CCAA and permit issuance criteria and whether additional NEPA analysis would be required before such activities could be covered. Procedures to modify or amend this CCAA are described in Sections 12 and 13 of this document. Covered activities may be conducted by the enrolled landowner, their employees, contractors, agents, or other assigns as described in the Permit and the associated CI.

## **5.0 CONSERVATION OBJECTIVES AND MEASURES**

### **5.1 CONSERVATION GOALS OF THE CCAA**

The conservation goals of this CCAA are to conserve and contribute to the recovery of fisher in Washington State. Accordingly, the objectives of this CCAA are intended to eliminate, reduce, or minimize threats to the species in Washington State. The fisher CCAA will allow WDFW to:

- Determine the presence of fishers on non-federal lands as part of an assessment of the long-term success of fisher reintroduction.
- Document reproduction by reintroduced female fishers on non-federal lands.
- Support the growth and stability of reintroduced fisher populations in the initial, most crucial years after release by protecting reproductive females and their young when they occupy den sites on non-federal lands.
- Increase public participation in and support for fisher reintroductions and recovery in Washington.

### **5.2 CONSERVATION MEASURES**

In Washington State, over nine million acres of forest land is owned by non-federal forest landowners and subject to state Forest Practices (FP) rules. The FP Rules were developed to meet Clean Water Act

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<sup>1</sup> It is not legal to hunt or trap fishers or other species classified as endangered or protected in Washington State (RCW 77.15.130).

and ESA requirements and include management prescriptions that maintain riparian functions and protect threatened and endangered species and their habitats. The riparian corridor and wildlife protection rules are not identified as CMs in this document, but they provide conservation benefits to the fisher by ensuring that a range of suitable habitat locations are available over the term of this CCAA. For example, habitat provisions for northern spotted owls and marbled murrelets also provide habitat suitable for fisher den sites, as well as other habitat needs. The values of non-federal lands and current wildlife protection rules are exemplified by the important role that tribal, state and privately-owned lands have played in providing dispersal and foraging habitats for reintroduced fishers on the Olympic Peninsula.

**To qualify for take coverage, all enrollees must agree to implement the following conservation measures (CM) on enrolled lands.**

- CM1.** Allow WDFW or its agents, with reasonable prior notice (defined as no less than 24 hours), to access enrolled lands to perform the monitoring activities described below. In the case of tribal lands or other lands managed by a tribe, tribal biologists may conduct the monitoring outlined below, with the information shared with WDFW.
- 1) Determine if female fisher(s) are occupying dens and raising kits. Denning females will be detected by radio-telemetry or by incidental observation. WDFW or, if applicable, tribal biologists will notify participating landowners within 24 hours if fishers are suspected of denning on enrolled lands or in close proximity of enrolled lands. WDFW or, if applicable, tribal biologists may place cameras at the suspected den sites to confirm denning activities. WDFW or, if applicable, tribal biologists will notify the landowner within 24 hours of the confirmation of a den. Denning females will be monitored weekly to determine occupancy of specific sites and verify movement to new den sites. WDFW or, if applicable, tribal biologists will notify participating landowners within 24 hours of verifying that a female fisher has abandoned a previously occupied den site. The ability to detect female fishers with functioning radio-transmitters is a function of the battery life of the radio-transmitters (~2 years). Female fishers with radio-transmitters are expected to be released for 2-3 years in each of the southern and northern Cascades (see Lewis 2013 for details on time-frames).
  - 2) Evaluate fisher presence for the term of the CCAA (20 years) to determine the long-term success of recovery efforts in Washington. Methods may include but are not limited to the use of remote cameras, hair-snaring devices, and bait and scent lures. Temporary sampling stations may be established periodically (e.g., 2-5 year intervals) on enrolled lands.
- CM2.** Protect confirmed denning females and their young by limiting or preventing access and disturbance near occupied sites, including preventing the destruction of the denning structure itself (i.e., a tree, snag, log, or other structure). Denning activities are most likely to occur between 15 March and 30 September and females may remain at a particular den site for days or weeks before moving to a new site. Specifically, landowners shall not conduct or authorize any of the activities described in the forest management activities in Section 4 (including but not limited to timber felling, pre-commercial thinning, reforestation, salvage of trees, and brush control) within 0.25 miles of a known occupied den site (Sierra Pacific Industries CCAA; USFWS 2013a [page 4]), because those activities could result in disturbance or harm to denning fishers. Once the occupancy of a denning fisher is confirmed, all activities that meet the previous description may not be implemented within 0.25 miles until the landowner is notified by WDFW or, if applicable, tribal biologists that the site is no longer occupied (Denning females will be

monitored weekly to determine occupancy of specific sites and verify movement to new den sites). Participating landowners will implement protection measures within 24 hours of notification that an occupied den site has been confirmed. In cases where a female fisher chooses to establish a den site within 0.25 miles of an active road, road use can continue provided the volume of traffic and potential disturbance remains at or below the level that existed in the two weeks before the den was detected. Considerations should be made to use alternate routes away from occupied dens when possible, and where alternate roads do not exist, caution should be taken to avoid fisher road mortality (e.g., reduced speed limits). In cases where a female fisher chooses to establish a den site within 0.25 miles of an active harvest operation, yarding and hauling of felled timber may continue as long as the footprint of the habitat modification component of the activity does not move any closer to the denning fisher. In cases where a female fisher chooses to establish a den site within 0.25 miles of forest management activities in Section 4 that do not result in habitat modification (e.g., silvicultural surveys), those activities may continue as long as the footprint of those activities does not move any closer to the denning fisher.

- CM3.** Provide protection of denning female fishers by prohibiting trapping and nuisance animal control activities (see definition on page 32) within 2.5 miles of known occupied dens. Denning activities are most likely to occur between 15 March and 30 September and females may remain at a particular den site for days or weeks before moving to a new site. The 2.5 mile radius is based on the average of the longest female foraging movements around occupied den sites on the Olympic Peninsula from 2008 to 2011 (WDFW, unpubl. data). Denning females will be monitored weekly to determine occupancy of specific sites and verify movement to new den sites. WDFW or, if applicable, tribal biologists will notify participating landowners when den sites are established or moved within 24 hours of detection. In cases where WDFW or a tribe has granted the enrolled landowner a permit to trap problem animals, nuisance animal trapping and control activities within 2.5 miles of the den site will cease until 30 September or until the landowner is informed that the denning female has moved the den site.
- CM4.** Report to WDFW within 48 hours upon finding any potentially occupied den sites or any dead, sick, or captured fishers on enrolled lands. If possible, when a fisher is incidentally captured, take photos and collect scat and/or hair left in the trap post-release for WDFW biologists.
- CM5.** Cover all large water troughs or containers on enrolled lands or place a device within the structure (e.g., wooden pole to allow fishers to climb out) to prevent mortality of fishers from drowning, starvation or dehydration.
- CM6.** Where suitable habitat exists and where agreed upon by the Landowner and WDFW, allow the reintroduction of fishers on enrolled lands.

### **5.3 APPLICATION AND ENROLLMENT PROCESS**

As stated, the purpose of the CCAA is to implement conservation measures to benefit fishers on non-federal lands within the CCAA management zones.

The following steps summarize the process for application and enrollment of non-federal lands:

- 1. WDFW biologists conduct outreach to eligible landowners within CCAA management zones according to the following prioritization scheme:**
  - A. Lands within CCAA management zone 5 (Olympic Peninsula; Figure 2) are identified as a priority area for fisher conservation as they currently support a reintroduced population.
  - B. Lands within CCAA Management zones 1, 2, 3, 4 are priority areas for fisher conservation as the adjacent federal lands are expected to support a reintroduced population as early as November 2015 following reintroductions into the southwestern Cascades.
  - C. Lands within CCAA management zone 6 (southwest Washington) are secondary areas for conservation. Because of their proximity to an existing fisher population in zone 5, lands in zone 6 could be occupied by fishers now or in the near future.
- 2. Landowner expresses an interest in participating and provides the following information:**
  - Aerial photos or map of property;
  - Information on access (e.g., vehicular, off-road vehicle, or on foot) to their ownership; and
- 3. WDFW biologist performs an analysis of aerial photos or conducts a site visit to confirm enrollment eligibility with Landowner, if appropriate.** In the case of tribal lands or other lands managed by a tribe, tribal biologists may conduct the site visit, with the information shared with WDFW. **The property may be enrolled if it is deemed suitable, meaning that the property:**
  - A. Contains forested habitat;OR
  - B. Is suitable for use by fishers for any of their life history needs.
- 4. A WDFW Certificate of Inclusion Application is prepared by the Landowner with WDFW assistance.**
- 5. WDFW reviews and finalizes Application, in agreement with the landowner, and issues the Certificate of Inclusion.**
- 6. CCAA is implemented by participating landowner, as written, including application of all conservation measures.**

## **6.0 EXPECTED BENEFITS**

The conservation measures identified in this CCAA are expected to benefit the species by facilitating reintroduction and monitoring efforts in Washington State and by protecting known breeding fishers and their offspring on enrolled lands. Protection of known breeding fishers includes protecting occupied den sites; minimizing activities that may disturb the fishers using those den sites; and prohibiting trapping within 2.5 miles of known den sites. Participation in this CCAA and associated conservation measures will be encouraged on non-federal lands, as these lands are likely to provide significant habitat for fishers and support recovery of this species.

Recovery efforts in Washington State are contingent upon the reintroduction of a relatively small number of fishers (e.g., 90 fishers were reintroduced on the Olympic Peninsula) to serve as founder

populations. Because of the effects of environmental and demographic stochasticity (that is, due to the influence of unpredictable or uncertain variables), smaller populations are at greater risk of extinction than larger populations. While these reintroduced populations are expected to grow and repopulate a significant portion of the fisher's historical range in Washington, initially, small population size could place reintroduced populations at greater risk of extirpation. The measures included in this CCAA are expected to improve survival and reproductive success of reintroduced populations by protecting reproducing fishers and their offspring from harm when they occupy a den site on non-federal lands (CMs 2 and 3). The measures also provide a means to assess the long-term success of a reintroduction (CMs 1 and 4), which could allow WDFW and USFWS to determine if actions (e.g., releasing additional fishers, CM 6) are needed to support a small or otherwise imperiled founder population.

## **7.0 INCIDENTAL TAKE**

### **7.1 ANTICIPATED INCIDENTAL TAKE**

Take of fishers may occur incidental to implementation of the CMs or as a result of the covered activities. Incidental take is take "incidental to, and not the purpose of, the carrying out of an otherwise lawful activity". The ESA states that "the term take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct". "Harm" is defined by regulation as "an act which actually kills or injures fish or wildlife, including significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding or sheltering" (50 CFR 17.3). "Harass" is defined by regulation as "an intentional or negligent act of or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly impair normal behavioral patterns including breeding, feeding, or sheltering" (50 CFR 17.3).

The WDFW anticipates that incidental take will occur infrequently, and the conservation benefits derived from the conservation measures will exceed the anticipated incidental effects on the population. The conservation measures in this CCAA are specifically designed to minimize the potential for incidental take or harm to reproductive females and their kits while they occupy a known den site on non-federal lands during the kit-rearing season. Disturbance will be minimized or prevented within 0.25 miles of occupied den sites to reduce the risk of harm or harassment to females with kits and to avoid or minimize incidental take.

### **7.2 AUTHORIZED INCIDENTAL TAKE**

Take of fisher may occur incidental to engaging in covered activities on enrolled lands, even when these actions are performed in compliance with the CCAA conservation measures. Potential take includes, but is not limited to:

1. Occupied den sites of undetected collared female fishers or uncollared female fishers could incidentally and unknowingly be logged during legal forest practices.
2. Denning fishers and their kits, either undetected collared females or uncollared females, could be incidentally harassed by legal forest practices occurring in the vicinity of den sites.
3. Fishers could be incidentally captured in legal traps even when participating landowners are complying with the conservation measures in this CCAA.
4. Fishers could be incidentally injured or killed by vehicles on roads on enrolled lands.

### Incidental Logging of Fisher Den Sites

The den sites of undetected collared female fishers or uncollared female fishers could incidentally and unknowingly be logged during otherwise lawful forest practices. However, even if fishers are reintroduced to the Cascade Mountain Range and populations of the species reach carrying capacity in the CCAA management zones, we expect that take of fisher incidental to forest practices would be infrequent. Carrying capacity is defined as “the maximum population size of the species that the environment can sustain indefinitely, given the food, habitat, water, and other necessities available in the environment”.

The quantity of public (federal and state), private, and tribal lands in each CCAA management zone was quantified in Section 3.0 of this CCAA. Currently, only the Olympic Peninsula management zone is known to be occupied by fishers. The size and density of this population are currently unknown, but fishers are now broadly distributed on the Olympic Peninsula and reproduction has been documented in this population. Current WDFW recovery planning efforts include reintroducing fishers in the South and North Cascade Mountains (which comprise two reintroduction areas and four CCAA management zones). WDFW acknowledges that fishers in the Olympic, North Cascades, and South Cascades reintroduction areas could reach carrying capacity. Using this potential future condition, WDFW has estimated the maximum amount of take that could occur on enrolled lands during the term of the permit.

The average home range of a female fisher on the Olympic Peninsula in Washington is 63.5 square kilometers (km<sup>2</sup>) (Lewis 2014, p. iii). Assuming a uniform average female home range throughout the CCAA management zones allows calculation of the estimated maximum potential density of female home ranges. Resource limitation and other factors, however, make achieving this maximum potential density highly unlikely. Therefore, we are assuming that a likely density of female home ranges is 10% of the available landscape within the CCAA management zones at carrying capacity. We made this estimate from visual inspection of home range mapping in Lewis’s dissertation (2014) and subsequent detections (e.g., Happe et al. 2014), followed by conversations between WDFW and USFWS biologists.

Lands eligible to enroll in the CCAA consist of non-federal publicly owned, tribal, or privately owned lands that represent a subset of the total area within these management zones. The number of female home ranges on eligible lands is therefore estimated from the percentage of such lands in each CCAA management zone, the average size of a female home range, and the density of female home ranges on the landscape at carrying capacity.

Research based on radio-collared fishers on the Olympic Peninsula suggests that an even distribution across public, private, and tribal lands is not likely. Lewis (2014, p. iii) found that only 21 percent of female fishers tracked set up a home range on private or tribal lands. The percentage of denning females on private and tribal land on the Olympic Peninsula was therefore 19 percent lower than would have been expected by chance based on the total availability of land in each ownership type. Assuming a similar distribution in other reintroduction areas, an equivalent adjustment to the estimated number of home ranges on private and tribal land in each CCAA management zone represents the apparent

female fisher preference for the habitat provided by public lands (except for in CCAA management zone 6, where little public land is available). Using the home range sizes, areas of enrolled lands, and carrying capacity assumptions mentioned above, we computed rough and conservatively large estimates of female fisher home ranges that may occur on private and tribal lands at carrying capacity.

Each home range, at most, has one active denning female each year. Female fishers use multiple dens over the course of a breeding season, but since kits are likely killed if an occupied den site is cut down during the breeding season, our analysis considers the den to be at a single location randomly placed within each home range.

Estimating the total amount of incidental take from logging fisher den sites requires determining the probability that an active den site will be cut down during legal harvest on enrolled lands, and how many of these events would be expected to occur during the life of the permit. Because collared females whose dens have been located would be protected, this estimate only applies to females without collars, females with nonfunctioning collars, and females with collars whose dens have not been located.

Harvest on private timber lands in Washington occurs at a rate of approximately 1.2 percent of the available land base per year (USFWS 2006, p. 392). Therefore, 1.2 percent of home ranges should be subject to harvest activity annually. This approach relies on several assumptions. For example, this model assumes that all harvest occurs during the active denning period, even though fishers use den sites for less than half of the year. This assumption makes the projection somewhat conservative by overestimating the number of dens subject to harvest activities. This model also assumes that the selection of stands for harvest and the selection of trees/stands for denning are random, though neither of these processes occurs randomly. Both fishers and timber producers, however, are likely to select for older stands; therefore, the model may underestimate the overlap of harvest and fisher dens. Conversely, fishers may also be more likely to select areas excluded from harvest under state forest practice rules (e.g., riparian buffers, unstable slopes, etc.) because the trees in reserve areas will be allowed to grow and develop structure during the next 20 years.

Cutting down an active den site is likely to result in death of the kits inside, and possibly the mother (we assume that she would flee 50 percent of the time). Average litter size is two (Powell 1993, p. 53 and Powell et al. 2003, pp. 639-640 in USFWS 2014b, p. 9). We used the assumption and data above to predict as many as 26 dens per year on enrolled lands at carrying capacity after reintroductions are complete. With the previously mentioned estimation of harvest rates, we anticipate that up to 0.63 fishers per year (approximately one den every three years on average, with death of the mother in 50 percent of incidents) could be incidentally taken as a result of felling trees on enrolled lands in all CCAA management zones combined (see Appendix B). During the 20-year permit, we therefore estimate that 12 kits and 3 adult female fishers would be killed (see Appendix B).

#### Disturbance to Fishers at Den Sites

Denning fishers, either undetected collared females or uncollared females and their kits, could be incidentally harassed by legal forest practices occurring in the vicinity of the den site. We assume that

this disturbance could occur when forest practices or other activities with noise and human presence (but particularly habitat altering activities) are within 0.25 miles of an active den site.

Disturbance is most likely to result in meaningful biological consequences (either a significant disruption of normal behaviors (harassment) or significant disruption of essential behaviors (harm)) when a female fisher is annoyed to the extent that she moves her kits to another denning location before she would have otherwise done so. In some cases, this event may result in predation on one or more kits and/or the mother. Since the disturbance disrupts the normal behaviors of the mother fisher and therefore kits even if they are not themselves deciding to move, we consider the mother and her kits to be harassed.

Given the broad array of activities that could result in disturbance (i.e., road work, gravel pit operations, harvest, etc.), we consider harm or harassment due to disturbance to be a more likely event than direct mortality by removal of a den site. We estimate that there could be as many as 26 active dens on enrolled lands each year across all of the CCAA management zones (see Appendix B). Based on the total amount of potentially enrolled lands (24,851 km<sup>2</sup>), there could be one active den per 1,000 square kilometers. Given existing information, WDFW cannot determine how many of these dens may be within 0.25 miles of covered activities or what percentage of the enrolled landscape may have active operations during each denning season. Further, WDFW cannot infer how often a disturbance may result in female fishers moving kits – or if moved, if meaningful biological consequences occur. If WDFW assumes that 10% of dens are disturbed (harassed) during the denning season, and that 10% of disturbances result in the death of at least one fisher (harm), then we infer that 3 dens (therefore 3 adult female fishers 6 kits) would be disturbed each year in all enrolled lands (26 dens divided by 10 and rounded up), and that this disturbance results in the death of a single fisher every three years (3 dens divided by 10). During the 20-year permit, we therefore estimate that 180 fishers would be harassed and 7 fishers (either kits or the adult female) would be killed as a result of that harassment (see Appendix B).

#### Incidental Trapping of Fishers

Fishers could be incidentally captured in legal traps even when participating landowners comply with the conservation measures in this CCAA (e.g., lawful box traps or exempted body-grip traps that are not placed within 2.5 miles of a known occupied fisher den). For example, of the four fishers that have been incidentally captured on the Olympic Peninsula since reintroductions began in 2008, none were within 2.5 miles of a known active den site. One of those fishers was captured in a body-gripping trap on Tribal lands (Lewis 2014, J. Lewis, pers. comm.) and three of those fishers were captured in live traps (Happe et al. 2013, pp. 16-17) and released unharmed. One of the fishers apparently captured in a body gripping trap was discovered deceased on the Quinault Reservation with wounds on one leg (Lewis 2014).

From the available data, we assume that incidental captures of fishers could occur at a rate of approximately 0.5 fishers per year per reintroduction area (four trapped fishers in the Olympic reintroduction area over 8 years). If fishers are reintroduced to the South Cascades and North Cascades reintroduction areas, up to 1.5 fishers per year may be incidentally trapped in the three reintroduction areas, which is 30 fishers over the 20-year duration of the permit. All fishers captured would be counted

as take in the form of “capture”, but a portion of those individuals captured may also be harmed. With the available data, we can infer that one-in-four fishers that are captured could be harmed. Therefore up to 8 fishers would be injured or killed by legal trapping on enrolled lands during the 20-year term of the permit. In instances where fishers are harmed, the form of take is harm instead of capture.

#### Vehicle Collisions with Fisher

Death by motor vehicle accounted for 7 (20%) of the 35 fishers recovered during the Olympic reintroduction project (Lewis 2014, p. iii). Recent reports documented that three more fishers have been killed by vehicles (Happe et al. 2013, p. 18; Happe et al. 2014, pp. 15-16). Most, but not all of these individuals were killed on Highway 101. Two females have been found road-killed on paved roads in rural areas with 35 MPH speed limits. A male was also killed on a paved logging road. Privately owned roads on enrolled lands (especially unpaved roads) are likely to have less traffic and lower speed limits. Accordingly, it is likely that vehicle collision mortality on enrolled lands will be a small portion of the estimated total mortality from vehicle collisions in all recovery areas. We assume that vehicle collisions on private roads (such as those on enrolled lands) will continue to account for less than 30 percent of all vehicle collision mortalities (three of the 11 reported in Washington). Three collision mortalities over eight years is 0.375 fishers per year per reintroduction area. If fishers are reintroduced to the South Cascades and North Cascades reintroduction areas, up to 1.125 fishers per year may be killed by vehicles on enrolled lands in all of the CCAA management zones combined, which is approximately 23 fishers over the 20-year duration of the permit.

#### Summary

WDFW anticipates incidental take of fishers from harvest of unknown den trees (harm), disturbance of fishers at unknown den sites (harassment and harm), capture of fishers incidentally trapped (harassment and harm), and vehicles collisions with fishers (harm). The anticipated amount of take is dependent on the quantity of enrolled lands and the future distribution of fishers, but under a potential future condition where all eligible lands are enrolled and fishers occupy all recovery areas at expected densities, up to 255 fishers would be harmed (53), harassed (180), and/or captured (22) during the 20-year duration of the permit (see Appendix B).

## **8.0 ASSURANCES PROVIDED IN CASE OF CHANGED OR UNFORESEEN CIRCUMSTANCES**

The assurances listed below apply to participating landowners. The assurances apply only where the CCAA, the Permit, and the associated Certificates of Inclusion are being properly implemented, and only with respect to fishers.

### *(1) Changed circumstances provided for in the CCAA.*

If the habitat protections provided by the Northwest Forest Plan or any of the Habitat Conservation Plans described in Section 20 of this CCAA are modified, discontinued, or no longer afford conservation benefit to fisher during the duration of this CCAA, WDFW will confer with USFWS to determine the

ongoing effectiveness of this CCAA. If USFWS determines that changes to plans described in Section 20 prevent this CCAA from achieving the CCAA standard, this CCAA may be modified to ensure that conservation benefits meeting the CCAA standard can be achieved. Enrolled landowners may choose to continue their participation under the modified CCAA or to discontinue their participation in the CCAA at any time.

If unanticipated levels of take of fisher occur over the duration of this CCAA, WDFW will confer with USFWS to determine the ongoing effectiveness of this CCAA. If USFWS determines that the amount of take or the impact of such take prevents this CCAA from achieving the CCAA standard, this CCAA may be modified to ensure that conservation benefits meeting the CCAA standard can be achieved. Enrolled landowners may choose to continue their participation under the modified CCAA or to discontinue their participation in the CCAA at any time.

*(2) Changed circumstances not provided for in the CCAA.*

If additional conservation measures not provided for in the CCAA's operating conservation program are necessary to respond to changed circumstances, USFWS will not require any conservation measures to benefit fisher in addition to those provided for in the CCAA without the consent of the Landowner, provided the CCAA is being properly implemented.

*(3) Unforeseen circumstances.*

- (A) If additional conservation measures are necessary to respond to unforeseen circumstances, the USFWS Director may require additional measures of the Permittee and enrolled Landowner(s) where the CCAA is being properly implemented, but only if such measures are limited to modifications within the CCAAs conservation strategy for the affected species, and only if those measures maintain the original terms of the CCAA to the maximum extent possible. Additional conservation measures will not involve the commitment of additional land, water, or financial compensation, or additional restrictions on the use of land, water, or other natural resources available for development or use under the original terms of the CCAA without the consent of the Permittee and the enrolled Landowner(s).
- (B) The USFWS will have the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. The USFWS will consider, but not be limited to, the following factors:
  - (1) Size of the current range of the affected species;
  - (2) Percentage of range adversely affected by the CCAA;
  - (3) Percentage of range conserved by the CCAA;
  - (4) Ecological significance of that portion of the range affected by the CCAA;
  - (5) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the CCAA;
  - and
  - (6) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

## **9.0 MONITORING PROVISIONS**

Relative to implementation of the CCAA and fulfillment of its provisions, including implementation of agreed-upon conservation measures, WDFW will be responsible for monitoring and reporting, as described in this section.

As specified in the CMs, enrolled landowners will be notified at least 24 hours in advance of WDFW entering enrolled properties to perform site monitoring or, if applicable, a tribal biologist will perform the site monitoring and then share the resulting information with WDFW. When a female fisher is located on a Landowner's enrolled land, WDFW or, if applicable, tribal biologists will notify the affected landowner within 24 hours of the detection. Monitoring of the denning female will be conducted at least once each week to verify compliance with the Conservation Measures preventing disturbance:

Issues of non-compliance (e.g. access not permitted to WDFW or, if applicable, tribal biologists to perform monitoring, or activities disturbing a den site) will be addressed through direct communication between WDFW, USFWS, and the individual Landowner to encourage compliance with CI and CCAA. Where compliance with the CI and CCAA cannot be achieved, WDFW will suspend or revoke the enrolled landowner's Certificate of Inclusion.

WDFW will provide an Annual Report to USFWS no later than (September 31<sup>st</sup>) each year. The Annual Report shall include the following required components:

- A list of all enrolled properties and documentation of the boundaries and descriptions of included lands;
- A running total of enrolled lands by management zone;
- A summary of all monitoring activities over the previous year;
- An assessment of species status across the State and within each of the management zones;
- A summary of the total amount of take documented over the previous year;
- A summary of fisher research activities occurring on lands enrolled in the CCAA;
- (Any other information required to ensure permit compliance and to document CCAA effectiveness in recovering the species).

## **10.0 NOTIFICATION OF TAKE REQUIREMENT**

Because occupied den sites will be monitored by WDFW or, if applicable, tribal biologists, and protected by enrolled Landowners, incidental take will be avoided or minimized and incidental take that is observed will be documented as part of the monitoring and protection process. All instances of incidental take will be reported to USFWS as required by regulation.

## **11.0 DURATION OF CCAA AND PERMIT**

WDFW has submitted a CCAA with a proposed term of 20 years. The Permit issued with the approved CCAA will become effective if the fisher becomes listed, and will remain in effect for the duration of the CCAA. The WDFW may seek to renew the CCAA and the Permit beyond the specified term of 20

years. If WDFW chooses to renew the permit, WDFW will initiate the renewal process in accordance with USFWS regulations (50 CFR 13 and 50 CFR 17). Enrolled landowners may choose to renew their participation under the WDFW permit in accordance with WDFW procedures and USFWS regulations at the time of permit renewal.

The duration of each CI will be identified in that document, except that no CI may extend in duration beyond the term of the CCAA. Landowners must notify WDFW at least 90 days prior to expiration of their CI if they wish to extend the duration of their enrollment. Enrolled landowners will notify WDFW within 30 days following a sale or transfer of covered lands.

Participation in the CCAA and the Permit and access to the assurances they provide is only available to participating landowners who enroll lands under this CCAA through the issuance of a CI prior to any future effective ESA listing date of the covered species.

## **12.0 MODIFICATION OF CCAA**

After approval of the CCAA, USFWS may not impose any new requirements or conditions on, or modify any existing requirements or conditions applicable to, a landowner or successor in interest to the landowner, to compensate for changes in the conditions or circumstances of any species or ecosystem, natural community, or habitat covered by the CCAA except as stipulated in 50 CFR 17.22(d)(5) and 17.32(d)(5) without their agreement.

WDFW and USFWS may propose modifications or amendments to this CCAA by providing written notice to, and obtaining the written concurrence of, the other Parties. 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 in a timely manner.

## **13.0 AMENDMENT OF THE PERMIT**

The permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and USFWS permit regulations (50 CFR 13 and 50 CFR 17). If proposing an amendment, WDFW or USFWS shall provide a statement describing the proposed amendment and the reasons for it to the other Parties to the CCAA. Landowners enrolled under Certificates of Inclusion will have the opportunity to comment on any modifications proposed by USFWS or WDFW.

## **14.0 TERMINATION OF AGREEMENTS**

### **14.1 TERMINATION OF CERTIFICATES OF INCLUSIONS BY LANDOWNER**

As provided for in Part 8 of USFWS CCAA Policy (64 FR 32726, June 17, 1999), a Landowner may terminate implementation of a CI's voluntary management actions prior to the CI's expiration date, even if the expected benefits have not been realized. If a Landowner terminates his/her CI, the Landowner's take authorization (if the fisher has become listed) and assurances granted by the Permit are forfeited. The Landowner is required to give 60 days written notice to WDFW of its intent to terminate the CI, and must give WDFW, USFWS, or their agents the opportunity to potentially relocate affected fishers within 60 days of the notice.

## **14.2 TERMINATION OF CERTIFICATES OF INCLUSION BY WDFW**

WDFW has the right to cancel any CI where the Landowner or his/her successor(s) is found to be in non-compliance with the terms and conditions of the CCAA. If a Landowner is found to be in non-compliance, WDFW will issue a written letter of non-compliance to the Landowner. The Landowner shall have sixty (60) days from receipt of the letter to rectify the non-compliance issue(s). If the issue(s) is not resolved to the satisfaction of the Parties by mutual consent by the end of the 60-day period, the CI shall be declared null and void.

## **14.3 TERMINATION OF THE CCAA BY WDFW**

WDFW may terminate this CCAA prior to its expiration date by giving at least 90 days prior written notice to USFWS and to all participating landowners holding a CI. During this notice period WDFW will make good faith efforts and pursue all appropriate options with USFWS to either:

- a. locate a suitable transferee to assume the rights and responsibilities of WDFW under this CCAA and the Permit pursuant to 50 C.F.R. 13.24(c), 13.25(c), or
- b. assist all cooperating landowners holding a CI who desire to do so in obtaining individual permits pursuant to 50 C.F.R. 17.22(b), 17.32(b), 17.22(d), or 17.32(d), as appropriate.

## **15.0 PERMIT SUSPENSION OR REVOCATION**

The USFWS may suspend the privileges of exercising some or all of the Permit authority at any time if WDFW is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. Such suspension shall remain in effect until the issuing officer determines that the landowner has corrected the deficiencies.

The USFWS may not revoke a Permit except as follows:

The USFWS may revoke a Permit for any reason set forth in 50 CFR 13.28(a)(1) through (4). This regulation authorizes revocation if: the landowner willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or the landowner fails within 60 days to correct deficiencies that were the cause of a permit suspension; or the landowner becomes disqualified; or a change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by USFWS.

A permit can be disqualified or revoked if:

1. A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act, or the ESA disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a 1305 written petition.
2. The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.
3. The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgment disqualifies such person from receiving or exercising the privileges of a permit as long

as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

4. The failure to submit timely, accurate, or valid reports as required may disqualify such persons from receiving or exercising the privileges of a permit as long as the deficiency exists.

The USFWS may revoke a Permit if continuation of the permitted activity would either appreciably reduce the likelihood of survival and recovery in the wild of any listed species, or directly or indirectly alter designated critical habitat such that it appreciably diminishes the value of that critical habitat for both the survival and recovery of a listed species.

Before revoking a permit for either of the two reasons in the preceding paragraph, USFWS, with the consent of the landowner, will pursue all options that USFWS consider appropriate to avoid permit revocation. These options may include, but are not limited to: extending or modifying the existing permit, compensating the enrolled landowner to forgo the activity, purchasing an easement or fee simple interest in the enrolled property, or arranging for a third party acquisition of an interest in the property.

## **16.0 REMEDIES**

For the purpose of Sections 16 and 17, the parties to the agreement include USFWS, WDFW and any landowners that have entered into a Certificate of Inclusion. Each party shall have all remedies otherwise available to enforce the terms of the CCAA, the permit and the associated CIs. No party shall be liable in damages for any breach of this CCAA, any performance or failure to perform an obligation under this CCAA, or any other cause of action arising from this CCAA.

## **17.0 DISPUTE RESOLUTION**

The parties recognize that disputes concerning implementation of, compliance with, or termination of this CCAA and associated CIs, may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

### **17.1 INFORMAL DISPUTE RESOLUTION PROCESS**

Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in Federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

- (a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.
- (b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the

initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

- (c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.
- (d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

## **18.0 SUCCESSION AND TRANSFER**

Certificates of Inclusion entered into pursuant to this CCAA shall be binding on and shall inure to the benefit of the Landowners and their participating successors and transferees (i.e., new owners) in accordance with applicable regulations (50 CFR 13.24 and 13.25). The rights and obligations under a CI may be transferred with the ownership of the enrolled property and are transferable to subsequent non-Federal landowners pursuant to 50 CFR 13.25. The CI issued to the landowner is also transferable to the new owner(s) pursuant to 50 CFR 13.25. If a CI is transferred, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving CCAA assurances by signing a new CI instead of assuming the existing one. Each CI shall require the Landowner to notify WDFW in writing of any transfer of ownership, so that WDFW can attempt to contact the new owner, explain the conservation measures applicable to the property and the assurances, and seek to interest the new owner in signing the existing CI or a new one. Assignment or transfer of the CI shall be governed by USFWS regulations in force at the time.

## **19.0 AVAILABILITY OF FUNDS**

Implementation of this CCAA is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this CCAA 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 USFWS will not be required under this CCAA 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.

## **20.0 RELATIONSHIP TO OTHER AGREEMENTS AND INITIATIVES**

### **20.1 AGREEMENTS AND INITIATIVES OUTSIDE THE SCOPE OF THE CCAA**

Northwest Forest Plan: The US Forest Service and the USDI Bureau of Land Management (1994) administer forest management practices within the range of the northern spotted owl that protect late-successional forests and foster the development of late-successional forests to provide habitat for the federally threatened northern spotted owl. This plan is referred to as the Northwest Forest Plan and its provisions apply to Olympic, Mt. Baker-Snoqualmie, Okanogan-Wenatchee and Gifford Pinchot National Forests in Washington. The large spatial scale and specific goals of the Northwest Forest Plan are

expected to provide large portions of the state that are capable of supporting large, self-sustaining fisher populations, once they are reintroduced.

National Park Service: The National Park Service manages three large National Parks in Washington State that already provide habitat for fishers; or will provide habitat for fishers once they are reintroduced: Olympic National Park, Mt. Rainier National Park, and North Cascades National Park. The National Park Service is the lead Federal agency for two fisher reintroduction efforts in cooperation with WDFW. The Olympic Fisher Reintroduction is complete and the Cascades Reintroduction may begin as soon as December 2015.

## **20.2 OTHER AGREEMENTS AND INITIATIVES ON NON-FEDERAL LANDS**

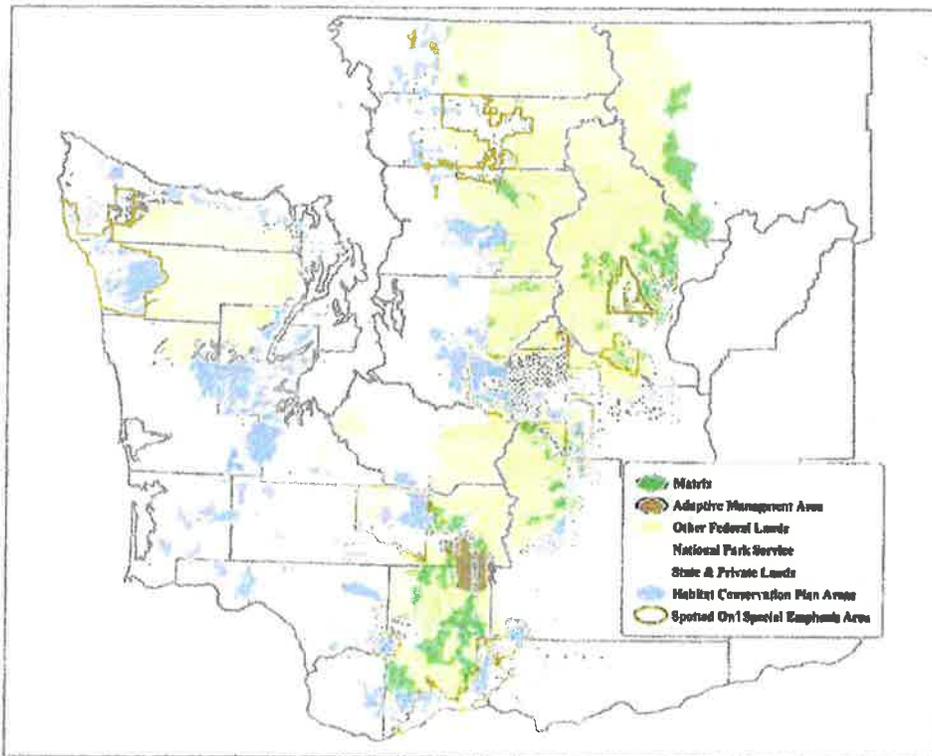
### **Habitat Conservation Plans**

A number of habitat conservation plans (HCPs) have been developed for non-federal lands within the CCAA management zones (Figure 2) that include fisher as a covered species and currently support or could support reintroduced fisher populations. The largest of these HCPs within the CCAA management area is the HCP developed by Washington Department of Natural Resources (WDNR 1997). The fisher is also covered under five other HCPs in Washington State, listed below.

HCPs developed for lands within the CCAA management zones include:

- Washington Department of Natural Resources (WDNR 1997)
- Murray Pacific Corporation (now West Fork Timber Company) (Beak Consultants Incorporated 1993)
- Port Blakely Tree Farms, Robert B. Eddy Tree Farm (Port Blakely Tree Farms 1996)
- City of Seattle, Cedar River Watershed (City of Seattle 2000)
- Plum Creek Timber Company (Plum Creek Timber Company 2000)
- City of Tacoma, Green River Watershed (Tacoma Public Utilities 2001)

This CCAA will complement the conservation commitments described in these HCPs, as well as the conservation of foraging and denning habitats for fishers provided by National Parks and the Northwest Forest Plan. The majority of HCP-covered lands are within the CCAA management zones and adjacent to federal lands, and are expected to directly enhance conservation of fisher in Washington as they disperse throughout the forest matrix.



**Figure 3. Location of Habitat Conservation Plan areas in Washington (modified from Buchanan and Sweden 2005).**

## **21.0 NO THIRD-PARTY BENEFICIARIES**

This CCAA 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 CCAA to maintain a suit for personal injuries or damages pursuant to the provisions of this CCAA. The duties, obligations, and responsibilities of the Parties to this CCAA with respect to third parties shall remain as imposed under existing law.

## **22.0 NOTICES AND REPORTS**

Any notices and reports required by this CCAA shall be delivered to the persons listed below as appropriate:

Director, WDFW  
 600 Capitol Way N.  
 Olympia, WA 98501

Field Supervisor, USFWS  
510 Desmond Drive SE, Suite 102  
Lacey, WA 98503

This CCAA shall be implemented in conformance with all applicable laws and regulations of the United States and with all consistent laws and regulations of the State of Washington. If any provision of this CCAA is held unlawful, it may be severed and the remaining provisions will continue in force, consistent with the overall conservation purpose for the fisher.

This document constitutes the entire CCAA between the Parties and no modification shall be effective unless it is in writing and signed by the authorized representatives of both Parties.

IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature date below, executed this CCAA to be in effect as of the date that USFWS issues the Permit. IN WITNESS WHEREOF, THE PARTIES HERETO have, as of the last signature date below, executed this Candidate Conservation Agreement with Assurances to be in effect as of the date that USFWS issues the permit.

  
\_\_\_\_\_  
Director Date  
Washington Department of Fish and Wildlife

 7/1/16  
\_\_\_\_\_  
Deputy Regional Director Date  
U.S. Fish and Wildlife Service

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**APPENDIX A. CERTIFICATE OF INCLUSION**

**Candidate Conservation Agreement with Assurances for the Fisher in the State of Washington Certificate of Inclusion**

This certifies that the participating member of the property described below will be included within the scope of the Permit that will be issued to the Washington Department of Fish and Wildlife (WDFW) by the U.S. Fish and Wildlife Service 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). This permit will become effective if the fisher is listed under the ESA. Such permit will authorize incidental take of covered species as part of a Candidate Conservation Agreement with Assurances (CCAA). This incidental take will be allowed due to the application of all the conservation measures outlined in the Programmatic CCAA on the enrolled property that will benefit the covered species and/or its habitats within their range in the CCAA coverage area. Pursuant to that Permit and this Certificate of Inclusion, the holder of this certificate will be authorized to engage in any otherwise lawful activity on the described property that may result in the incidental taking of the covered species, as appropriate, subject to the terms and conditions of the Permit and the CCAA. Permit authorization is subject to carrying out the conservation measures described below and the terms and conditions of the Permit and the CCAA. By signing this Certification of Inclusion, the participating member agrees to carry out the described conservation measures.

Participating Property Owner's Name and Address:

Legal Description of Enrolled Properties: See Attachment 1

Detailed Map(s) with Enrolled Properties Identified: See Attachment 2

NOTE: Map(s) must clearly show property boundaries and other applicable important features.

Total Acres of Enrolled Properties (all properties covered by permit): \_\_\_\_\_ acres

Duration of Certificate of Inclusion from date of last signature (minimum of 10 years). Certificates of Inclusion will expire with the term of the CCAA unless renewed (i.e., a CI will not provide assurance beyond the duration of the agreement between WDFW and USFWS): \_\_\_\_\_ years

The participating member agrees to allow WDFW employees or its agents to enter the enrolled properties to complete the monitoring as described in the Programmatic CCAA. For tribal lands or other lands managed by a tribe, in lieu of granting WDFW access, the required monitoring may be carried out by tribal biologists and the resulting information shared with WDFW.

Initial one of the following choices:

Member requests reasonable notice prior to entry: \_\_\_\_\_

Courtesy notice not required: \_\_\_\_\_

Tribal biologists will perform monitoring: \_\_\_\_\_

The participating member agrees to allow US Fish and Wildlife Service employees or its agents to enter the enrolled properties as necessary, with prior coordination, to maintain or enforce the CCAA.

Initial one of the following choices:

Member requests coordination prior to entry: \_\_\_\_\_

Courtesy notice not required: \_\_\_\_\_

The participating member agrees to give 60 days written notice to WDFW of their intent to terminate this Certificate of Inclusion, and must give the US Fish and Wildlife Service an opportunity to relocate affected covered species within 30 days of the notice.

Enrolled landowners will notify WDFW within 30 days following a sale or transfer of covered lands. WDFW will offer the new owner the option of receiving conservation coverage by agreeing to implement all CCAA conservation measures and signing a new CI.

Participating Landowner

\_\_\_\_\_ Date \_\_\_\_\_  
--- Participant Signature(s) ---

Washington Department of Fish and Wildlife

\_\_\_\_\_ Date \_\_\_\_\_  
Dr. Jim Unsworth - Director

**APPENDIX B. TAKE ESTIMATES**

CCAA Zone	Private (km <sup>2</sup> )	Public (km <sup>2</sup> )	Tribal (km <sup>2</sup> )	Total (km <sup>2</sup> )	Max # HRs	Adjusted total HRs	Public land bias	Private and Tribal HRs	Enrolled Lands HRs	Dens per year	# Dens Harvested	# Kits killed	# Denning females killed
1	2915	8284	0	11199	176.4	17.64	Yes	1.24	1.24	1.24	0.01	0.03	0.01
2	1765	1442	2076	5283	83.20	8.32	Yes	4.47	4.47	4.47	0.05	0.11	0.03
3	3526	2598	0	6124	96.44	9.64	Yes	3.72	3.72	3.72	0.04	0.09	0.02
4	1165	3804	0	4969	78.25	7.83	Yes	0.35	0.35	0.35	0.00	0.01	0.00
5	6164	8102	967	15233	239.8	23.99	Yes	6.67	6.67	6.67	0.08	0.16	0.04
6	6254	1407	19	7680	120.9	12.09	No	9.88	9.88	9.88	0.12	0.24	0.06
Totals	21789	25637	3062	50488		79.51		26.33	26.33	26.33	0.32	0.63	0.16
		Non-Public Total	24851				In 20 years	526.53	526.53	526.53	6.318	12.64	3.16

#### Data and Assumptions

Female Fisher Average Home Range (km<sup>2</sup>): 63.5

Proportion Saturation of management zones by female home ranges: 0.1

Percent of female home ranges on private lands: 19 percent lower than predicted by chance

Proportion Harvested Each Year: 0.012

Proportion of Private Lands Enrolled: 1

Average Litter Size: 2

#### Calculations

CCAA Zones are identified in Figure 2.

*Private* (km<sup>2</sup>) lands were enumerated by WDFW in Table 1.

*Public* (km<sup>2</sup>) lands were enumerated by WDFW in Table 1.

*Tribal* (km<sup>2</sup>) lands were enumerated by WDFW in Table 1.

*Total* (km<sup>2</sup>) lands are the summation of private, public, and tribal lands enumerated in Table 1.

*Max # HRs* is the maximum number of female fisher home ranges that could conceivably fit into the total amount of public, private and tribal lands in the CCAA management zones, given that there are 24,851 acres of those lands and the average female fisher home range is 63.5 km<sup>2</sup>. (divide each zones total lands by 63.5)

*Adjusted total HRs* is the maximum number of female fisher home ranges that we actually expect to fit in the total amount of public, private and tribal lands in the CCAA management zones, given that there are 24,851 acres of those lands and the average female fisher home range is 63.5 km<sup>2</sup>, but adjusting the Max # HRs to assume a 10 percent saturation of the landscape. (Divide each zones Max HRs by 10)

*Public land bias* is a way to account for female fishers apparent preference for establishing their home range on public lands. We did this for each CCAA management zone that has significant public land, which is every CCAA management zone except for zone 6. As described in the narrative above, we are assuming that the number of female fisher home ranges on private and tribal lands is 19 percent lower than would be expected by chance.

*Private and Tribal HRs* is expected number of female fisher home ranges on private and tribal lands, given the expected total number of home ranges in each CCAA management zone and the assumed preference of female fishers to set up their home ranges on public lands. The calculation for this is in each CCAA management zone is:  
(Adjusted total HRs \* (((Private km<sup>2</sup> + Tribal km<sup>2</sup>) / Total km<sup>2</sup>) - (Adjusted km<sup>2</sup> \* 0.19))

*Enrolled lands HRs* is the expected number of female fisher home ranges on all enrolled lands. Since for this analysis we are assuming that all enrollable lands do enroll, this quantity is equal to Private and Tribal HRs.

*# Dens per year* is the number of dens expected on all enrolled lands. We are assuming for this analysis that all female fishers den every year, and since our analysis does not account for moves between dens (see narrative above), this quantity is equal to enrolled lands HRs.

*# Dens Harvested* estimates the number of dens that would be harvested on enrolled lands each year, assuming that dens are randomly placed on the landscape and 1.2 percent of the landscape is randomly harvested. (# Dens per year \* 0.012)

*# Kits killed* is the number of kits estimated to be killed in each harvested den. Since the average litter size is 2, # Kits killed is # Dens Harvested times 2.

*# Denning females killed* is the number adult female fishers that are estimated would be killed as a result of den trees being harvested. Since we have assumed that the adult female fishers is also killed in 50 percent of incidences, # denning females killed is # Dens Harvested divided by two.

**Form of Take**

Action	Harmed per year	20-year total	Harassed per year	20-year total	Capture per year	20-year total
Logging Den Site	0.75	15				
All Activities Near Dens	0.33	7	9	180		
Trapping	0.4	8			1.1	22
Collisions	1.125	23				
<b>Total</b>	<b>2.605</b>	<b>53</b>	<b>9</b>	<b>180</b>	<b>1.1</b>	<b>22</b>
					<b>Yearly Total</b>	<b>12.705</b>
					<b>20-year total</b>	<b>255</b>



## **ADDENDUM 1 - NOTIFICATION OF CHANGE TO CCAA**

### ***Section 11.0 - DURATION OF CCAA AND PERMIT***

#### **Rationale & Need for Content/Wording Change:**

Within Section 11 of the proposed CCAA, several landowners identified a “practical problem” with language in the CCAA that could potentially create a “business problem”, but is of no environmental or conservation consequence concerning fisher. The original proposed CCAA language required landowners to provide notice of a land transfer/sale at least 60 days before closing. This requirement could potentially create problems for landowners in several ways: 1) Sometimes transactions occur rather quickly; 2) Sometimes transactions must remain confidential until closing; 3) Sometimes early disclosure would interfere with marketing strategies; 4) and so on.

Under the terms of the CCAA, landowners are free to remove property at any time, and simply lose assurances for dis-enrolled properties. As such, the prior notification provision serves no essential conservation purpose. However, it is potentially a barrier concerning the willingness of landowners to participate in the CCAA.

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To address the issue of land transfer/land sales notification, the Washington Department of Fish & Wildlife (WDFW) has changed the notification wording in the proposed final CCAA where applicable, and as follows:

#### **Original Wording:**

“The duration of each CI will be identified in that document, except that no CI may extend in duration beyond the term of the CCAA. Landowners must notify WDFW at least 90 days prior to expiration of their CI if they wish to extend the duration of their enrollment. Enrolled landowners will notify WDFW at least 60 days in advance of a potential land sale or transfer.”

#### **Revised Wording:**

“The duration of each CI will be identified in that document, except that no CI may extend in duration beyond the term of the CCAA. Landowners must notify WDFW at least 90 days prior to expiration of their CI if they wish to extend the duration of their enrollment. Enrolled landowners will notify WDFW within 30 days following a sale or transfer of covered lands.”

### ***Section 5.2 – Conservation Measures CM2 (page 14)***

#### **Rationale & Need for Change:**

The citation of forest practices WAC222-16-080 *Critical habitats (state) of threatened and endangered species* was not applicable as used in the original proposed CCAA. This citation has been removed from the text in Conservation Measure 2.

