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The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Arlington, Channel 261C2, and Moro, Channel 283C1, and removing Channel 283C at The Dalles.

3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Covington, Channel 283C3, and Trout Lake, Channel 226A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau.*

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**BILLING CODE 6712-01-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AF43**

#### Endangered and Threatened Wildlife and Plants; Supplemental Proposed Rule To Remove the Douglas County Population of Columbian White-Tailed Deer From the Federal List of Endangered and Threatened Wildlife; Notice of a Public Hearing

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revision and notice of public hearing.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) is publishing a revised proposal to establish two distinct population segments (DPS) of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*): The Douglas County DPS and the Columbia River DPS. We also propose to remove the Douglas County, Oregon, population from the List of Endangered and Threatened Wildlife, under the Endangered Species Act of 1973 (Act), as amended. A previous proposed rule was issued on May 11, 1999. In this revised proposed rule, we provide new information and clarify our reasons for proposing to delist the population.

Current data indicate that the Douglas County DPS of Columbian white-tailed deer has recovered. This DPS has increased from about 2,500 animals in 1983, to over 5,000 today. The range of the population has also increased. This robust population growth, coupled with habitat acquired and protected for the population, have brought the Douglas County DPS to the point where a change in status is appropriate. This recovery has primarily been the result of habitat acquisition and management for the deer, hunting restrictions, and the application of local ordinances designed to protect the deer population.

The proposed delisting of the Douglas County DPS will not change the endangered status of the Columbia River DPS. It will remain fully protected by the Act.

**DATES:** We will accept comments until the close of business on August 20, 2002. The public hearing will be held from 6 p.m. until 8 p.m. on July 30, 2002, in Roseburg, Oregon. Prior to the public hearing, the Service will be available from 1 p.m. to 3 p.m. to provide information and to answer questions. Registration for the hearing will begin at 5:30 p.m.

**ADDRESSES:** The public hearing will be held at the Holiday Inn Express, 375 West Harvard Blvd, Roseburg, Oregon. If you wish to comment, you may submit your comments and materials at the hearing or by any one of several methods:

(1) You may submit written comments and information to the State Supervisor, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266.

(2) You may hand-deliver written comments to our Oregon Fish and Wildlife Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to: [FW1ColumbianWTD@r1.fws.gov](mailto:FW1ColumbianWTD@r1.fws.gov). See the Public Comments Solicited section below for file format and other information on electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Cat Brown, Wildlife Biologist, at the Oregon Fish and Wildlife Office (see **ADDRESSES** section) (telephone 503/231-6179; facsimile 503/231-6195).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus*) is the westernmost representative of 30 subspecies of white-tailed deer in North and Central America (Halls 1978; Baker 1984). It resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lb)) for females and 52 to 68 kg (115 to 150 lb) for males (Oregon Department of Fish and Wildlife (ODFW) 1995). Generally a red-brown color in summer, and gray in winter, the subspecies has distinct white rings around the eyes and a white ring just behind the nose (ODFW 1995). Its tail is relatively long, brown on top with a white fringe, and white below (Verts and Carraway 1998). The subspecies was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936; Verts and Carraway 1998). Early accounts suggested this deer was locally common, particularly in riparian areas along major rivers (Gavin 1978). The decline in Columbian white-tailed deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys (Gavin 1978). Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors, apparently caused the extirpation of this deer over most of its range by the early 1900s (Gavin 1978).

By 1940, a population of 500 to 700 animals along the lower Columbia River in Oregon and Washington, and a disjunct population of 200 to 300 in Douglas County, Oregon, survived (Crews 1939; Gavin 1984; Verts and Carraway 1998). These two remnant populations remain geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Columbian white-tailed deer in Douglas County are most often associated with riparian habitats, but studies have shown that the deer uses a variety of lower elevation habitat types. Radio-tagged deer in a recent

study selected riparian habitats more frequently than any other habitat type, but were also found using all the other habitat types in the study area (i.e., grassland, grass shrub, oak savannah, oak-hardwood woodland, oak-hardwood savannah shrub, oak-hardwood conifer, conifer and urban/suburban yards) (Ricca 1999). This study found that the areas of concentrated use within a deer's home range were generally located within 200 meters (m) (650 feet (ft)) of streams (Ricca 1999), which confirms earlier work (Smith 1981) suggesting that habitat type is less important than distance to a stream. Open areas

(grasslands and oak savanna), are used for feeding between dusk and dawn (Ricca 1999). The diet of Columbian white-tailed deer consists of forbs (broad-leaved herbaceous plants), shrubs, grasses, and a variety of other foods, such as lichens, mosses, ferns, seeds, and nuts (Lowell Whitney, Oregon State University, pers. comm., 2001).

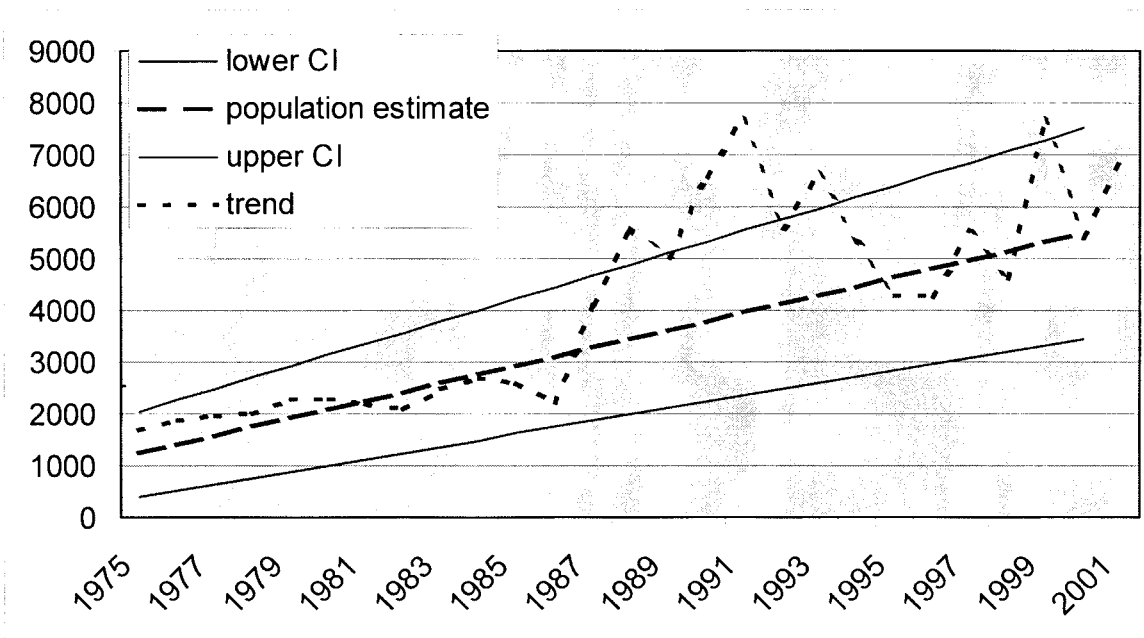
Population estimates for the Columbian white-tailed deer in Douglas County have demonstrated a fairly steady upward trend since management for the population began (see Table 1 and Figure 1).

TABLE 1.—ANNUAL TREND COUNTS (BASED ON SPRING CENSUSES) AND POPULATION ESTIMATES (BASED ON LINEAR REGRESSION) WITH CONFIDENCE INTERVALS (LOWER AND UPPER POPULATION ESTIMATES) FOR COLUMBIAN WHITE-TAILED DEER IN DOUGLAS COUNTY, 1975–2001 <sup>1</sup>

Year	Annual trend count (deer/mile)	Population estimate	Confidence intervals	
			Lower population estimate	Upper population estimate
1975	1.7	1230	407	2054
1976	1.9	1400	528	2272
1977	1.95	1570	650	2489
1978	2	1740	771	2707
1979	2.3	1910	892	2925
1980	2.3	2080	1014	3143
1981	2.2	2250	1135	3361
1982	2.1	2420	1257	3579
1983	2.5	2590	1378	3797
1984	2.7	2760	1500	4015
1985	2.6	2930	1621	4233
1986	2.2	3100	1743	4451
1987	4.1	3270	1864	4669
1988	5.6	3440	1985	4887
1989	5	3609	2107	5105
1990	6.6	3779	2228	5322
1991	7.7	3949	2350	5540
1992	5.6	4119	2471	5758
1993	6.6	4289	2593	5975
1994	5.3	4459	2714	6194
1995	4.3	4629	2835	6412
1996	4.3	4799	2957	6630
1997	5.5	4969	3078	6848
1998	4.6	5139	3200	7066
1999	7.7	5309	3321	7284
2000	5.4	5479	3443	7502
2001	6.9	5649	3564	7720

<sup>1</sup> From D. Jackson, *in litt* 2001.

Figure 1. Douglas County Columbian white-tailed deer Population estimates from 1975 to 2001, with upper and lower confidence intervals (CI). The annual population estimate is superimposed on the linear regression estimate (from D. Jackson, in litt 2001).



In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at 200 to 300 individuals within a range of about 79 square kilometers (km<sup>2</sup>) (31 square miles (mi<sup>2</sup>)) (Crews 1939). By 1983, the population had increased to about 2,500 deer (Service 1983). The population has continued to grow and is currently estimated at over 5,000 deer (Columbian White Tailed Deer Recovery Team (Recovery Team), *in litt.* 2001; ODFW, *in litt.* 2001; DeWaine Jackson, ODFW, *in litt.* 2001). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km<sup>2</sup> (309 mi<sup>2</sup>) (ODFW 1995). In 2001, ODFW estimated that there were about 6.9 deer per mile along their standard census routes, with a sex ratio of 22 adult bucks to 100 adult does, and about 35 fawns to 100 does. Annual population surveys indicate that deer density has doubled in the last 20 years, and the population may be at or near carrying capacity in portions of its range within Douglas County (Ricca 1999).

The State of Oregon has had a long history of research and active management of the Douglas County population of Columbian white-tailed deer. In 1927, the Oregon State

Legislature established a White-tailed Deer Refuge in Douglas County. Early studies estimated a population of 200 to 300 Columbian white-tailed deer on the refuge, and an approximately equal number of Columbian black-tailed deer (*Odocoileus hemionus columbiana*) (Crews 1939). The white-tailed deer in Douglas County was subsequently considered to be a black-tailed deer or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon (ODFW 1995); the refuge was dissolved in 1952, and regulated hunting resumed (Gavin 1984). In 1978, Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that County (Service 1983).

Since 1978, ODFW has conducted spring and fall surveys to estimate population size, recruitment, and sex ratios (ODFW, *in litt.* 2001). Standard routes for spotlight surveys have been established along 76.4 km (47.5 mi) of road within the known range of the population (ODFW, *in litt.* 2001). The fall deer census counts both Columbian white-tailed deer and Columbian black-tailed deer throughout Douglas County, from November 15 thru December 15 in most years, on warmer, rainy nights

when the deer are most active. All deer observed are classified by species, sex, and age (i.e., fawns, does, or bucks by antler class). This allows an estimate of fawn production going into winter (fawns per 100 adults), and in the case of black-tailed deer, the post hunting season buck survival (bucks per 100 does) (Steve Denney, ODFW, *in litt.* 2001).

The spring census is similar to the fall count. On warm, wet nights in March, ODFW conducts a spotlight count along the standard road routes, recording both white-tailed and black-tailed deer. All deer observed are recorded and classified as either adults or fawns; this provides an estimate of overwinter fawn survival (fawns per 100 does) and population trend (expressed as deer per mile) (S. Denney, *in litt.* 2001).

The State also implements an active research program, in coordination with the Service and Oregon State University, to investigate deer habitat use and movement of radio-tagged individuals (Ricca 1999; ODFW 1995; ODFW, *in litt.* 2001). Since 1998, for example, ODFW has been transplanting radio-tagged Columbian white-tailed deer from areas of high deer densities to Mildred Kanipe Memorial Park in northwestern Douglas County. The goals of the project have been to boost numbers of deer in the

park, accelerate range expansion to the north, to refine capture and transplanting techniques, and to move deer from areas where damage has been a concern (S. Denney, *in litt.* 2001).

The Columbian white-tailed deer was listed as endangered by the State with the passage of the Oregon Endangered Species Act in 1987 (ODFW 1995). In 1995, ODFW reviewed the status of the Columbian white-tailed deer in Oregon (both Douglas County and Columbia River populations), and concluded that the subspecies had recovered (ODFW 1995). At the November 1995 meeting of the Oregon Fish and Wildlife Commission (OFWC), the Commissioners voted unanimously to remove the Columbian white-tailed deer from the State of Oregon list of threatened and endangered species; the subspecies was placed on the State Sensitive Species List for continued monitoring (OFWC 1995). Oregon continues to prohibit hunting of white-tailed deer in all western Oregon big game management units (ODFW 2001).

#### **Distinct Vertebrate Population Segment**

The Douglas County and Columbia River populations of the Columbian white-tailed deer meet the requirements for consideration as distinct population segments as described in our Policy Regarding the Recognition of Distinct Vertebrate Population Segments, published in the **Federal Register** on February 7, 1996 (61 FR 4722). For a population to be considered as a distinct vertebrate population segment, two elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; and (2) the significance of the population segment to the species to which it belongs.

A population may be considered discrete if it is (1) separated from other populations of the same taxon due to physical, physiological, ecological, or behavioral factors or (2) limited by international governmental boundaries where there are differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms. The Douglas County and Columbia River populations of Columbian white-tailed deer are discrete because they are geographically isolated from each other. Historically, this subspecies ranged from the south end of Puget Sound in Washington south to the Umpqua River drainage in Oregon (Bailey 1936). At the present time, the subspecies is found in two locations (along the Columbia River in Washington and Oregon, and in Douglas County, Oregon), which are separated by over 320 km (200 mi) of

discontinuous or unsuitable habitat. Columbian white-tailed deer are not migratory and appear to restrict their movements to relatively small home ranges (ODFW 1995). Laboratory research has also demonstrated that there is a relatively large genetic difference between the Douglas County and Columbia River populations of Columbian white-tailed deer (Gavin and May 1988), which indicates a lack of gene flow between the two populations. As a result, the wide geographic gap in suitable habitat between the Columbia River and Douglas County populations demonstrates that this subspecies has two discrete population segments.

The following issues are considered when determining significance: (1) Persistence of the discrete population segment in an unusual or unique setting for the taxon; (2) evidence that loss of the segment would result in a significant gap in the range of the taxon; (3) the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; or (4) the population segment differs from other populations of the species in its genetic characteristics.

The Douglas County and Columbia River populations are considered significant under our policy based on two factors. First, the loss of either of the Douglas County and Columbia River populations would result in a significant gap in the range of the subspecies. The loss of either population would substantially constrict the current range of the subspecies. Second, each population has genetic characteristics that are not found in the other population (Gavin and May 1988). Because the Douglas County and Columbia River populations of the Columbian white-tailed deer are discrete and significant, they warrant recognition as Distinct Vertebrate Population Segments under the Act.

#### **Review of the Columbian White-Tailed Deer Recovery Plan**

In accordance with the Act, we appointed a team of experts to develop a recovery plan for the Columbian white-tailed deer. We approved the original Columbian White-tailed Deer Recovery Plan (Recovery Plan) in 1977, and the Recovery Team revised the Recovery Plan in 1983 to include the newly recognized Douglas County population (Service 1983).

Because of the distance between the Columbia River and Douglas County populations and differences in habitats and threats, the Recovery Plan addresses the recovery of each population

separately. The Recovery Plan identified the following objectives for the Douglas County population: (1) To downlist the population to threatened, the Recovery Plan recommended the maintenance of 1,000 Columbian white-tailed deer in a viable status on lands within the Umpqua Basin of Douglas County, while keeping the relative proportions of deer habitat within the known range of the subspecies from further deterioration; (2) Additionally, to delist the population, it recommended the maintenance of a minimum population of 500 animals from the larger population be distributed on 2,226 hectares (ha) (5,500 acres (ac)) of suitable, secure habitat within the Umpqua Basin of Douglas County on lands owned, controlled, protected, or otherwise dedicated to the conservation of the species (Service 1983).

The Recovery Plan defined secure habitat as those areas which are protected from adverse human activities (e.g., heavy, unregulated grazing by domestic animals, clearing of woody plants) in the foreseeable future, and which are relatively safe from natural phenomena that would destroy their value to the subspecies (Service 1983:46). The Recovery Plan did not define secure habitat to include only publicly owned lands; rather it provided further guidance on secure habitat by stating that local entities, including planning commissions, county parks departments, and farm bureaus, could secure habitat through zoning ordinances, land use planning, parks and greenbelts, agreements, memoranda of understanding, and other mechanisms available to local jurisdictions (Service 1983:52). The Recovery Plan also recommended that private conservation organizations be encouraged to secure habitat for Columbian white-tailed deer through easements, leases, acquisitions, donations, or trusts (Service 1983:52).

The Recovery Plan identified a series of tasks that the Recovery Team recommended to meet the downlisting and delisting objectives for the Douglas County population of Columbian white-tailed deer (Service 1983:45–54). These tasks fall into five main categories: (1) Track population status; (2) ensure viability of the population through enforcement of existing laws and regulations; (3) secure and protect habitat to allow the population to increase; (4) study the ecology of the population and assess the threat of hybridization with Columbian black-tailed deer; and (5) encourage public support for Columbian white-tailed deer restoration. Nearly all of the tasks listed in the Recovery Plan (Service 1983)

have been accomplished. We provide a summary of recovery tasks and their implementation status below.

(1) *Track population status.* Tasks in this first category have been fully implemented. ODFW, with funding from the Service, has surveyed the population almost yearly since 1978. Data collected include spring and fall trend counts, estimates of overall population size, recruitment, and sex ratios. Surveys indicate that the population has grown from about 2,500 animals in 1982 to about 5,000 in 2001 (Service 1983; ODFW, *in litt.* 2001). The Recovery Plan included a model to estimate the minimum population size necessary to avoid extinction; using this model, the Recovery Team concluded that a population of 500 deer in Douglas County could be considered safe from the potentially deleterious effects of inbreeding (Service 1983). The most recent estimate of the overall population of Columbian white-tailed deer in Douglas County is significantly larger than the objectives established in the recovery plan (ODFW, *in litt.* 2001).

(2) *Ensure viability of the population through enforcement of existing laws and regulations.* Tasks concerning enforcement of existing laws to protect the Columbian white-tailed deer have been fully implemented. It is currently illegal to take Columbian white-tailed deer under State law (ODFW 2001) and as proscribed in section 9 of the Act. Service biologists have coordinated with our agency's Law Enforcement Special Agents and our National Fish and Wildlife Forensics Laboratory in Ashland, Oregon, to refer illegal take cases to the Oregon State Police, which has successfully prosecuted a number of Columbian white-tailed deer poaching cases (Sgt. Joe Myhre, Oregon State Police, pers. comm., 2001). See additional discussion under Factor D, below, for more detail. We have also engaged in section 7 consultations with Federal agencies for those actions which were determined to have the potential to affect Columbian white-tailed deer.

(3) *Secure and protect habitat to allow the population to increase.* Since 1978, over 2,830 ha (7,000 ac) have come into public ownership and are being managed for values compatible with Columbian white-tailed deer use (see full description of these parcels in Factor A, below). This acreage includes the North Bank Habitat Management Area (NBHMA), managed by the Bureau of Land Management (BLM), and Mildred Kanipe Memorial Park. Smaller parcels owned by Douglas County and The Nature Conservancy (TNC) also provide secure refugia for deer. In addition, Douglas County has used its

authorities to conserve the Columbian white-tailed deer. The Douglas County Comprehensive Plan (DCPD) 2000a, county zoning ordinances (DCPD 2000b), and the Douglas County Deer Habitat Protection Program (DCPD 1995), also have been essential in protecting open space and rural agricultural landscapes used by the deer.

The Recovery Plan recommended that the Service and ODFW develop a long-term management plan for the Douglas County population of Columbian white-tailed deer (Service 1983:50). Although a single, population-wide plan has not been prepared, this task has been, or is being, accomplished, in part, through site-specific management plans for the NBHMA (BLM 2001), Douglas County's Habitat Protection Program for the Columbian white-tailed deer (DCPD 1995), and Mildred Kanipe Memorial Park (plan currently under development) (Jeff Powers, Director, Douglas County Parks Department, pers. comm., 2001).

(4) *Study the ecology of the population and assess the threat of hybridization with Columbian black-tailed deer.* Several tasks in the Recovery Plan recommended research on the ecology of the population. A substantial amount of research has been conducted by ODFW and Oregon State University (Smith 1981; ODFW 1995; Ricca 1999; L. Whitney, pers. comm., 2001). BLM used information from these studies to develop the NBHMA management plan, the largest property managed for the deer. Laboratory studies and field observations have been used to gauge the extent of hybridization between Columbian white-tailed deer and Columbian black-tailed deer in Douglas County (Gavin and May 1988; Kistner and Denney 1991; ODFW 1995); none of these studies has indicated that hybridization is a threat to the population.

(5) *Encourage public support for Columbian white-tailed deer restoration.* The final set of tasks in the Recovery Plan deals with educating the public about the Columbian white-tailed deer restoration program. This task continues to be implemented by biologists from the Service and ODFW. ODFW has produced informational materials on the deer population in Douglas County for the public and landowners. The Service and ODFW also provide information and recommendations to private landowners who have Columbian white-tailed deer on their property.

Recovery Plans are intended to guide and measure recovery. The Act provides for delisting whenever the best available information indicates that a species,

subspecies, or distinct population segment is no longer endangered or threatened. The Columbian white-tailed deer population is robust and expanding, and substantial habitat has been protected by Federal acquisition and Douglas County's zoning and open space regulations. We acknowledge that it is difficult to demonstrate that the specific delisting objective of 500 deer on 5,500 ac of secure habitat as stated in the Recovery Plan has been met (Service 1983). Surveys consistently show that most deer depend on a combination of public and private lands. Five hundred deer may live entirely on secure and suitable lands managed for deer, but demonstrating that is not feasible. However, as discussed below in the listing factor analysis, we believe that the improved status of the Columbian white-tailed deer in Douglas County justifies its removal from the List of Endangered and Threatened Wildlife. We have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

#### Previous Federal Action

On March 11, 1967, the Columbian white-tailed deer was listed in the **Federal Register** as an endangered species under the Endangered Species Preservation Act of 1966 (32 FR 4001). At that time, the subspecies was believed to occur only along the Columbia River, whereas the population in Douglas County was believed to be hybridized with the Columbian black-tailed deer (ODFW 1995). On March 8, 1969, we again published in the **Federal Register** (34 FR 5034) a list of fish and wildlife species threatened with extinction under the Endangered Species Conservation Act of 1969. This list again included the Columbian white-tailed deer. On August 25, 1970, we published a proposed list of endangered species, which included the Columbian white-tailed deer, in the **Federal Register** (35 FR 13519) as part of new regulations implementing the Endangered Species Conservation Act of 1969. This rule became final on October 13, 1970 (35 FR 16047). Species listed as endangered on the above-mentioned lists were automatically included in the Lists of Endangered and Threatened Wildlife when the Endangered Species Act was enacted in 1973. In 1978, the State of Oregon determined that white-tailed deer in the Roseburg area belonged to the Columbian subspecies (ODFW 1995). This determination resulted in that population being considered as endangered, together with the Columbia River population.

On May 11, 1999, we published a proposed rule to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife (64 FR 25263). We accepted public comments until July 12, 1999. We reopened the public comment period on November 3, 1999, to allow peer review of the proposed rule (64 FR 59729), and the comment period closed on November 18, 1999. We opened the public comment period again from December 29, 1999, to January 13, 2000, in order to provide three peer reviewers an opportunity to review previous public comments, and to accept any new public comments on the proposed rule (64 FR 72992).

### Summary of Comments on the First Proposal

In the May 11, 1999, proposed rule and associated notifications, and subsequent comment period reopenings, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties and asked them to comment. We published newspaper notices in the *News-Review*, Roseburg, Oregon, on May 30, 1999, and November 9, 1999, and in *The Oregonian*, Portland, Oregon, on May 30, 1999, and November 7, 1999, which invited general public comment. We received 89 comments, including those of 1 Federal agency, the State of Oregon, 3 academic or agency scientists, the Recovery Team, and 70 individuals or groups; 73 supported, 14 opposed, and 4 were neutral on the proposed action.

Comments included substantial new information regarding the management status of parcels considered secure for deer, and some commenters questioned our interpretation of population estimates for deer on those parcels. In this supplemental proposed rule, we acknowledge the merit of these comments, and have completely revised the proposed rule to incorporate this information, as well as other new information available since the publication of the proposed rule in 1999. We will seek peer review of this proposal during the public comment period.

Comments received during the comment periods are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues.

*Issue 1:* One commenter raised questions about the quality of the information used in preparing the

original proposed rule. This commenter provided information regarding the management status of parcels considered secure for deer, and also criticized the interpretation of population estimates for deer on those parcels.

*Our Response:* We have revised the proposed rule to better explain the basis for delisting. The revised proposed rule incorporates the information provided by the commenter, as well as new information available since the publication of the proposed rule in 1999. We have carefully re-examined all available information on current threats to the population, the relevant management documents for parcels providing habitat for the deer, and deer population estimates in revising the proposed rule. Because of this new information, we are issuing this supplemental proposed rule to delist the Douglas County population of Columbian white-tailed deer, and are providing another opportunity for the public to comment on this new proposal. We will also seek peer review of this proposal during the public comment period.

*Issue 2:* One commenter asserted that the delisting criteria specified in the Recovery Plan had not been met, and that we must withdraw our proposal to delist until all of the goals identified in the Recovery Plan had been fully attained.

*Our Response:* Recovery plans are intended to guide and measure recovery, but the Act also provides for delisting a species whenever it is no longer endangered or threatened based on an analysis of five factors set forth in the Act (16 U.S.C. § 1533(a)(i), *see also* 50 CFR § 424.11(d)). The deer population is larger and more robust than the Recovery Team envisioned in 1983, and over 2,830 ha (7,000 ac) of habitat used by the deer has been acquired by Federal and local government agencies.

We acknowledge that we do not know if the Columbian white-tailed deer has met the delisting criterion specified in the Recovery Plan (Service 1983) (e.g., 500 deer distributed on 5,500 acres of secure habitat). However, the deer population is large, a substantial amount of habitat in Douglas County is being managed for values compatible with Columbian white-tailed deer needs, and threats to its continued existence have been ameliorated. Our review of the five factors (see discussion in the Summary of Factors Affecting the Species below) shows that the Douglas County population of Columbian white-tailed deer has recovered and no longer requires the protection of the Act. We

have reached this conclusion with the concurrence of the Recovery Team (Recovery Team, *in litt.* 2001).

*Issue 3:* One commenter referred to a task in the Columbian White-tailed Deer Recovery Plan which recommended completion of a long-term management plan for the Douglas County population of the deer. The commenter claimed that delisting should not be considered until this task is completed.

*Our Response:* Although a single, population-wide plan has not been prepared, this task has been accomplished, in part, through management plans for the North Bank Habitat Management Area (NBHMA)(BLM 2001) and Douglas County's Habitat Protection Program (DCPD 1995) for the Columbian white-tailed deer. In addition, a management plan is currently under development for Mildred Kanipe Memorial Park (J. Powers, pers. comm., 2001). These large parcels, in concert with other lands in public ownership and those governed by Douglas County through zoning and open space regulations, ensure the population's continued protection. See the full discussion of this issue under Factor A, below.

*Issue 4:* We received 10 comment letters with recommendations regarding the 5-year post-delisting monitoring plan. Peer reviewers of the original proposed rule to delist the population unanimously stressed the importance of a monitoring program based on rigorous sampling procedures, in order to detect real trends in the population.

*Our Response:* Section 4(g) of the Act requires the Service to implement a system, in cooperation with the State, to effectively monitor the status of delisted recovered species for a minimum of 5 years. If we do delist the population, we will ask the Recovery Team and stakeholders to work with Service biologists to design and implement a statistically sound monitoring plan for the Douglas County population of the deer immediately after the final rule is published. We anticipate that the monitoring program will include spring and fall census counts, analysis of sex ratios, and recruitment estimates to determine population status. See the Monitoring section of this proposed rule for more information.

*Issue 5:* We received three comment letters on the 1999 proposed rule that recommended the Service monitor trends in habitat quality. The commenters suggested that formulation of a habitat management plan could improve existing riparian habitat, adjacent upland oak savannah, and native grasslands within the range of the deer in Douglas County. This

information could then be used to evaluate areas for potential transplantation and population expansion.

*Our Response:* We acknowledge the critical importance of maintaining and improving existing habitats used by the deer. We believe the currently approved management plans provide excellent protection for a substantial amount of occupied and potential habitats. The monitoring plan (see the Monitoring section) will include an annual review of habitat quality and trends, and will result in recommendations to the Service and ODFW, if action is required. We will continue to work with ODFW to identify additional parcels which may be protected and managed through available mechanisms, such as conservation easements with willing landowners.

*Issue 6:* Several commenters recommended that additional research should be pursued after the Douglas County population of Columbian white-tailed deer is delisted. Recommended research included: (1) A study of the genetic relationship among the Columbian white-tailed deer populations in Douglas County and along the lower Columbia River, and the northwest white-tailed deer in Idaho; (2) a study of mortality caused by parasites, diseases, and predators; (3) a study to determine if Columbian black-tailed deer are competitively excluding Columbian white-tailed deer from portions of the North Bank Habitat Management Area; and (4) a study of Columbian white-tailed deer movements at night, to determine if nocturnal spatial distribution is similar to that observed in daytime and twilight hours.

*Our Response:* We will work with the Recovery Team to identify needed research and potential funding sources that may assist in the management of the population after delisting.

*Issue 7:* Several commenters recommended that we initiate a trap and transplant program to reduce densities of Columbian white-tailed deer in portions of their range in Douglas County, and to create new populations in historic range.

*Our Response:* State guidelines direct ODFW to manage wildlife populations to assure population health. An important component of the State's continuing management of the subspecies will likely include a translocation program of Columbian white-tailed deer to currently unoccupied habitat within historic range. Present urban infrastructure creates obstructions to deer movement and severs natural connectivity between

habitat areas. Interstate 5 and State and county highways create hazards that impede deer movement because of traffic-induced mortality and harassment. In addition, fences, commercial and residential developments, and other urban features interfere with deer movement and the availability of suitable habitat (Service 2001).

Over the past 3 years, ODFW has moved 18 Columbian white-tailed deer to Mildred Kanipe Memorial Park from areas with high densities. One of the objectives of this operation was to remove deer from areas with perceived damage problems (S. Denney, *in litt.* 2001). We will work with the Recovery Team and biologists at ODFW to determine if continued translocation is an appropriate management tool to reduce deer densities, and to evaluate its potential to create a new population in currently unoccupied historic habitat in the Umpqua or Willamette basins.

*Issue 8:* We received 65 comment letters on the proposed rule from people concerned that delisting the deer would result in excessive hunting, leading to the need to re-list the population. One other commenter recommended that the Service monitor ODFW's proposed harvest level for the population, and allow public input on the issue.

*Our Response:* If the Douglas County population of Columbian white-tailed deer is delisted, the OFWC, with input from ODFW, would be responsible for determining whether a sport hunting season is justified. A recreational hunt could be considered as a tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). We will monitor the population for at least 5 years after delisting, and will work closely with ODFW to determine appropriate management options for the population. If sport hunting is determined to be an appropriate management tool, we would recommend conservative harvest levels to maintain a healthy population.

Initially, ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently numbers over 5,000 deer, which is considered to be large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001). ODFW seeks public input before setting big game harvest levels each year.

### Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act; these same five factors must be considered when a species is delisted. A species may be delisted according to section 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for one of the following reasons: (1) Extinction; (2) Recovery; or (3) Original data for classification of the species were in error.

After a thorough review of all available information, we have determined that the Douglas County population of Columbian white-tailed deer is no longer endangered or threatened with extinction. A substantial recovery has taken place since its listing in 1978, and none of the five factors addressed in section 4(a)(1) of the Act currently threatens the continued existence of the subspecies in Douglas County. These factors, and their relevance to the Douglas County population of Columbian white-tailed deer, are discussed below.

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* The Recovery Team recognized conversion of habitat to rural residential homesites and intensive livestock grazing as the prime threats to Columbian white-tailed deer habitat in Douglas County (Service 1983). A large area of habitat used by the deer has been protected, which has contributed to the population's recovery. Since 1978, over 2,830 ha (7,000 ac) have come into public ownership within the range of the Douglas County population of Columbian white-tailed deer. This acreage includes the BLM's NBHMA and Douglas County's Mildred Kanipe Memorial Park. In addition, several smaller parcels owned by the county and private landowners provide important refuge or hiding cover for deer.

The largest publicly owned parcel that provides habitat for deer is the NBHMA. The NBHMA, formerly the Dunning Ranch, was previously managed as a working cattle ranch. It was acquired by the BLM in 1994 through a land exchange (BLM 1998) specifically to secure habitat for the deer

since it lies within the population's core habitat. The NBHMA is located east of Roseburg in the North Umpqua River Basin and is characterized by four distinct habitat types: grasslands and oak savannah (29 percent), hardwood/conifer forest (52 percent), oak woodlands (17 percent), and other habitat such as rock outcrops, riparian areas, and wetlands (2 percent) (BLM 1998). As many as 348 Columbian white-tailed deer have been estimated to occur on the NBHMA (S. Denney, ODFW, pers. comm., 2001). There was no active management at the NBHMA in the period between its acquisition in 1994 and the completion of a management plan in 2001; this lack of management has resulted in a decline in habitat quality (BLM 2000). Thatch (rank vegetation) has built up in grassland areas, and invasion of undesirable shrub species, cedar encroachment in meadow areas, and conifer seedling establishment in oak woodlands have contributed to the decline in habitat quality by inhibiting forb production for deer forage, and by reducing the availability of preferred cover (BLM 1998). Even with this decline in habitat quality, the site continues to provide habitat for over 300 deer in the core of the population's range. The delay in initiation of management activities was due to the need to develop and approve a management plan for the parcel. A final management plan was approved in June 2001 (BLM 2001).

Implementation of the NBHMA final management plan will improve habitat quality for the deer (Service 2001). In October 2001, BLM began implementing the management plan by conducting a controlled burn to remove thatch on 162 ha (400 ac); subsequent monitoring shows that the burn was successful and new forage plants have sprung up in the burn zone (Ralph Klein, BLM, pers. comm., 2001). We will track the implementation of the NBHMA management plan through annual monitoring reports from the BLM (Service 2001).

Under the final management plan, management objectives for the site include: (1) Increased availability, palatability, and nutritional quality of deer forage and browse; (2) maintenance of mature oak, shrub, and herbaceous vegetation components; (3) control of noxious weeds; and (4) development of water sources (BLM 2000). Livestock grazing, prescribed burning, thinning, and timber management are some of the management tools that will be used to achieve these objectives (BLM 2000); these activities will be scheduled to

avoid sensitive periods (such as fawning and nursing) for the deer (Service 2001).

Livestock grazing and prescribed burning will be used to increase the abundance of desirable forage plants, and thinning in oak woodlands and removal of encroaching conifers will provide more preferred open canopy hiding cover for the deer (BLM 2001; Service 2001). Heavy unregulated livestock grazing can be considered a threat to the Columbian white-tailed deer (Service 1983:46), and the BLM recognizes that livestock grazing as a tool to improve deer habitat will have to be managed carefully on the NBHMA (BLM 2001). Poorly managed grazing can lead to the introduction or spread of non-native plant species, soil erosion and compaction, and reduction of desirable deer forage plants. However, the BLM will use livestock grazing as a tool to reduce thatch and annual grasses in favor of native, perennial vegetation that the deer prefer, and in areas that are inaccessible to equipment used for mowing or seed drilling (BLM 2001). In the final management plan for the NBHMA, the BLM has stated that it will manage cattle composition to be compatible with the deer (e.g., as adult/yearling units as opposed to cow/calf units) (BLM 2001); also, the timing and stocking rates would be based on vegetation manipulation to benefit the deer, rather than maximize benefits to the cattle (BLM 2001).

The final management plan also calls for development of water guzzlers, development of springs, pond construction, stream rehabilitation, and wetland enhancement to increase the use of habitats that are lightly used by the deer at present due to limited water availability (BLM 2001). This, in conjunction with forage and habitat improvement, should increase the carrying capacity of the NBHMA for Columbian white-tailed deer, and would likely result in a better distribution of animals across the management area (Service 2001).

The management plan also provides for a range of recreational opportunities within the NBHMA (non-motorized trail use, hunting, and a boat ramp) (BLM 2001). In our Biological Opinion on the management plan, we concluded that these activities are compatible with management for Columbian white-tailed deer and other special status species because the potential increase in public use that may result is not anticipated to negatively impact the deer, and the large amount of escape cover and forage areas available will provide an ample amount of refuge area where disturbance may be avoided (Service 2001).

Mildred Kanipe Memorial Park, managed by Douglas County Parks Department, is the second largest parcel of publicly owned land (445 ha) (1,100 ac) within the range of the Douglas County population of Columbian white-tailed deer; it lies about 16 km (10 mi) north of the NBHMA. Ms. Kanipe left the ranch to Douglas County in her will and directed the County to manage it as a wildlife refuge and working ranch (Kanipe 1983). Park activities, including recreation (equestrian and hiking trails), timber harvest, farming, and grazing are guided by the provisions in Ms. Kanipe's will and the Douglas County Farm Lease program (Kanipe 1983; Douglas County Parks Department 2001). Ms. Kanipe's will states that the ranch is to be used for park purposes and includes a number of conditions relating to its management as a park: (1) No hunting or trapping is allowed; (2) all animals, birds, and fish are protected as in a refuge, provided that the county, for park purposes, may plant and permit fishing in the ranch ponds; (3) trapping and hunting of predatory animals is allowed in the event that they become a nuisance and harmful to domestic and wild animals both within the park and on adjoining lands; (4) the county may establish a limited picnic ground and associated parking facilities, but no motorized vehicles are permitted within the park except as may be required for park construction and maintenance; (5) pasture lands are to be cared for and continued in grass and, equestrian trails shall be permitted; and (6) no timber shall be cut or harvested except as may be necessary, and cutting then, only upon a sustained yield basis with all revenue from timber cutting used by the county in capital improvements upon this park (Kanipe 1983). The current farm lease at the park allows the lessee to graze sheep and cattle at the ranch. The terms of the lease include provisions to maintain pasture quality, minimize soil erosion, eradicate noxious non-native plants, and protect native wildlife and watercourses (Douglas County Parks Department 2001). The annual farm lease provisions are reviewed and approved by ODFW biologists (M. Black, ODFW, pers. comm., 2001).

Douglas County is preparing a Coordinated Resource Management Plan (CRMP) for Mildred Kanipe Memorial Park; a Steering Committee has been established, which includes representatives from ODFW, local environmental and recreation groups, the Douglas County Parks Advisory Board, and individuals with forestry and range expertise (J. Powers, pers.



comm., 2001). The management plan will cover a wide range of issues, including recreation, wildlife, grazing, timber management, and riparian conservation, and will address such issues as the appropriate level of livestock grazing for the long-term (J. Powers, pers. comm., 2001). In the past several years, Douglas County has explored options for harvesting timber in the park, but these plans have been set aside until appropriate options are developed as part of the Coordinated Resource Management Planning process (J. Powers, pers. comm., 2001).

Since 1998, ODFW has conducted three translocations of marked Columbian white-tailed deer to the park. Of the 18 deer transplanted to the park, 7 are known to have died. Of those that died, one was an accidental death, two were killed by vehicles, one is suspected to have died of natural causes, two were likely the result of predation, and one was most likely an illegal kill (M. Black, ODFW, pers. comm., 2001; S. Denney, pers. comm., 2001). The survivors have remained in or near the park, and at least two radio-collared does have been observed with fawns (S. Denney, *in litt.* 2001). In 2001, 25 deer were counted in the park (S. Denney, pers. comm., 2001).

One parcel on private property provides protection for Columbian white-tailed deer habitat in perpetuity. In 1992, TNC purchased the Oerding Preserve at Popcorn Swale, a 14-ha (35-ac) site which is managed primarily for the endangered rough popcornflower (*Plagiobothrys hirtus*) (Service 2000b). The management objective at the preserve is to restore the native wet prairie (TNC 2001), but the preserve also provides some suitable foraging habitat for deer. Surveys have detected about 20 Columbian white-tailed deer on the parcel (S. Denney, pers. comm., 2001).

Douglas County has implemented land use plans and zoning ordinances that apply to private lands to protect habitat and assist in deer recovery (DCPD 2000a). These protective measures include retention of existing land uses that maintain essential habitat components. Minimum lot sizes for farm use and timberlands, and building setbacks along riparian zones, have been established to ensure maintenance of habitat and travel corridors (ODFW 1995; DCPD 2000a).

Douglas County's Columbian White-tailed Deer Habitat Protection Program was established in 1980 (DCPD 2000a). The County, in conjunction with ODFW and the Service, identified the range of habitat with the greatest density of Columbian white-tailed deer, and 29,743 ha (73,495 ac) were designated as

Essential Habitat Areas (DCPD 1995). Potential conflicting uses within the Essential Habitat Areas were identified as: (1) residential development in native riparian habitat; (2) additional livestock development in lowland river valleys; and (3) brush clearing aimed at creating and improving pastures for livestock that removes cover for deer (DCPD 2000a:6–19). To address these concerns, 96.5 percent (28,553 ha) (70,555 ac) of the resource lands (agricultural or farm/forest) within the Essential Habitat Area are subject to a minimum parcel size of 32 ha (80 ac); any land division requests of less than 30 ha (75 ac) must be reviewed by ODFW (DCPD 2000a). Land zoned as non-resource lands within the Essential Habitat Area (3.5 percent) is limited to single family dwellings, and rural residential development is limited to 0.8 ha (2 ac) and 2 ha (5 ac) lots (DCPD 1995, 2000a). Another component of Douglas County's program to preserve habitat for the subspecies is a 30-m (100-ft) structural development setback from streams to preserve riparian corridors within the Essential Habitat Area (DCPD 2000a).

Douglas County's application of zoning to protect Columbian white-tailed deer has been an essential factor in the population's recovery. The county has succeeded in limiting development and maintaining low human densities in the core of the deer population's range. The maintenance of open space on private lands significantly enhances the value of small publicly owned parcels used by the deer, such as Whistler's Bend County Park. Whistler's Bend County Park is directly south of the NBHMA, across the North Umpqua River. The park is 71 ha (175 ac) in size, and has a population of about 100 Columbian white-tailed deer (S. Denney, pers. comm., 2001). The park is managed for human recreation needs (DCPD 2000a), but also provides hiding cover for deer which make forays onto adjacent private lands to forage in the pastures and suburban yards surrounding the park (S. Denney, pers. comm., 2001). Small parcels such as this park function as important refugia for deer that meet many of their foraging requirements on adjacent private lands (Recovery Team, *in litt.* 2001).

Since management actions began, the population of Columbian white-tailed deer in Douglas County has increased and its range has expanded. In the 1930s, the Columbian white-tailed deer population in Douglas County was estimated at fewer than 300 individuals within a range of about 79 km<sup>2</sup> (31 mi<sup>2</sup>) (Crews 1939). By 1983, the population had increased to about 2,500 deer

(Service 1983). The population has continued to grow and is currently estimated at over 5,000 deer (Recovery Team, *in litt.* 2001; ODFW, *in litt.* 2001; DeWaine Jackson, ODFW, *in litt.* 2001). Along with this increase in numbers, the range also has expanded to the north and west, and the subspecies now occupies an area of approximately 800 km<sup>2</sup> (309 mi<sup>2</sup>) (ODFW 1995).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The white-tailed deer is a popular big game animal. Past overutilization was considered a threat to the Douglas County population of Columbian white-tailed deer, and was one of the several factors leading to its listing as endangered.

Currently, the State of Oregon does not permit any hunting of white-tailed deer in western Oregon (ODFW 2001), and measures have been taken to reduce accidental shooting of white-tailed deer. For example, at present, black-tailed deer hunting is allowed on the NBHMA, but is limited by special permit only, usually 25 permits or less, and is limited to one or two weekends of the general deer season. Pre-hunt training on deer identification is mandatory to prevent the accidental shooting of white-tailed deer. This has resulted in hunting having no significant impacts to the Columbian white-tailed deer population in this area (Service 2001).

Recreational hunting and the possession of loaded firearms is not permitted in Douglas County parks, with the exception of limited waterfowl hunting in some reservoir parks. Therefore, deer hunting is prohibited at Mildred Kanipe Memorial Park and at Whistler's Bend County Park (J. Powers, pers. comm., 2001). Ms. Kanipe's will also states that no hunting or trapping is to be allowed in the park (Kanipe 1983). TNC also prohibits hunting on the Oerding Preserve in order to maintain a refugia for Columbian white-tailed deer (TNC 2001).

If the Douglas County population is delisted, the OFWC, with input from ODFW, would be responsible for determining whether a sport hunting season is justified. State guidelines direct ODFW to manage wildlife populations to assure population health for present and future generations of Oregonians to enjoy (ODFW, *in litt.* 2001). Initially, ODFW intends to focus its efforts on expanding the range of the Columbian white-tailed deer with a trap and relocation program (ODFW, *in litt.* 2001). A recreational hunt could be considered as another tool to reduce population densities and improve herd health in selected areas (ODFW, *in litt.* 2001). The population currently

numbers over 5,000 deer, which is considered to be large enough to withstand some level of regulated harvest (ODFW, *in litt.* 2001).

Poaching, or illegal hunting, of Columbian white-tailed deer has been documented in this population (Ricca 1999; ODFW, *in litt.* 2001). During a recent 3-year study, 3 deer, out of 64 marked, were believed to have been taken by poachers (Ricca 1999). The Oregon State Police actively prosecutes poachers in Douglas County; cooperation among the State Police, ODFW, local Service biologists and our National Fish and Wildlife Forensics Laboratory has resulted in many successful cases. In each of the past 3 years, the Oregon State Police has successfully prosecuted three to five poaching cases. Nine of these illegal kills were proven to be intentional poaching, whereas four were cases of mis-identification (i.e., confusion with legally hunted black-tailed deer) (Sgt. J. Myhre, pers. comm., 2001). This low level of illegal hunting is not considered a threat to the survival of the population (ODFW 1995).

Other than sport hunting, we do not anticipate an appreciable demand for Columbian white-tailed deer for commercial or recreational purposes. There may be a small demand for deer for research. Scientific studies, permitted under section 10(a)(1)(A) of the Act, have resulted in the take of as many as 40 deer during 1 year from the Douglas County population (Kistner and Denney 1991). These permitted takings have not had measurable impacts on population trends in this population. If the population is delisted, ODFW will administer scientific taking permits based on the merits of the proposed research and with consideration of the effects to the population (ODFW, *in litt.* 2001). We believe that ample protections are in place under State law and regulations, and thus overutilization is unlikely to be a threat to the population in the future. Our proposed monitoring plan (see the Monitoring section) will track the status of the population for 5 years following delisting, which would alert us to any new threat of overutilization.

**C. Disease or predation.** No known epizootic (epidemic in animals) diseases have affected the Douglas County population of Columbian white-tailed deer, although several studies have documented the incidence of bacterial and parasitic infections. For example, in a recent study, disease was determined to have contributed to the deaths of adult deer in poor nutritional condition. Of 29 adult deer that died during a 3-year study, 28 percent died of a

combination of disease and emaciation (Ricca 1999). Necropsies revealed pneumonia, lungworms, and high levels of ecto-parasite infestation; none of these diseases would have been likely to kill an otherwise healthy adult deer, but in combination with a poor nutritional state (as evidenced by emaciation), these diseases were likely a factor in the cause of death (Ricca 1999). Diseases noted in fawn necropsies also included pneumonia and occasional instances of bacterial or viral infections (Ricca 1999). An earlier study by ODFW found moderate to high levels of internal and external parasites on adult deer and fawns, with low levels of viral diseases communicable to livestock (Kistner and Denney 1991).

High internal parasite loads have been considered an indication of high deer densities (ODFW, *in litt.* 2001), and recent research has found evidence that some Columbian white-tailed deer in Douglas County are suffering poor health due to high density (Ricca 1999). Delisting the Douglas County population of Columbian white-tailed deer would allow more management flexibility, such as hazing to disperse the deer to reduce or prevent large deer concentrations, or a regulated harvest, which could reduce the density of deer, resulting in increased herd health.

Deer hair-loss syndrome has been a concern in the Columbia River population of Columbian white-tailed deer, but has not been prevalent in the Douglas County herd. This disease is believed to be caused by the parasite *Parelaphostrongylus*, which invades the lungs of infected deer resulting in a low-grade pneumonia (Washington Department of Fish and Wildlife (WDFW) 1999). The pneumonia infection suppresses the deer's immune system, which may make infected deer more susceptible to external parasites. The disease is not necessarily fatal, but hair loss can result in death due to hypothermia in winter (WDFW 1999). Spotlight surveys by ODFW noted 2 deer (out of 329 counted) with obvious hair loss problems (ODFW, *in litt.* 2001). Two marked deer on the NBHMA are known to have died with hair loss; an infected fawn was noted, but is not known to have died from the disease (ODFW, *in litt.* 2001). Deer hair-loss syndrome is not currently considered to be a threat to the population, but the proposed post-delisting monitoring of the Douglas County population will include tracking the incidence of this disease.

In August 2001, a probable case of adenovirus, a viral disease, was identified through laboratory analysis in a Columbian white-tailed deer fawn in

Douglas County. It is likely that the fawn contracted the disease while being held in a rehabilitation facility. This would be the first known incidence of this disease in white-tailed deer (Dr. Beth Valentine, Veterinary Diagnostic Laboratory, Oregon State University, *in litt.* 2001; Dr. Terry Hensley, D.V.M., U.S.D.A. Veterinary Services, pers. comm., 2001). Adenovirus infection is potentially fatal to young deer, which may succumb to respiratory failure, hemorrhagic syndromes, or acute diarrhea and dehydration caused by the disease (Dr. T. Hensley, pers. comm., 2001). The disease has been previously detected in mule deer (*Odocoileus hemionus*) in northern California. An outbreak in the 1990s caused widespread mortality, but appears to have had no long-term effect on the population (Tapscott 1998). Therefore, it has been determined that disease is not a significant threat to the species. However, since its existence had been confirmed in the Douglas County Columbian white-tailed deer population, we will coordinate with State and Federal wildlife biologists and agencies to track the incidence of the disease to assist in effective management of the species.

Predation is known to be a leading cause of death in white-tailed deer populations (Halls 1978). Ricca (1999) studied survival of Columbian white-tailed deer fawns, and found that predation was the most frequent known cause of death for fawns in his study. Bobcats (*Lynx rufus*) were the dominant predator, and researchers found some evidence of predation by red foxes (*Vulpes vulpes*) and domestic dogs (Ricca 1999). Coyotes (*Canis latrans*) are frequent predators of white-tailed deer elsewhere (Halls 1978), but Ricca's (1999) study found no evidence of fawns killed by coyotes. The apparent absence of coyote predation may be due in part to the U.S. Department of Agriculture Animal and Plant Health Inspection Service (APHIS) Wildlife Services predator control program. Douglas County contracts with APHIS Wildlife Services to conduct predator control. The program focuses mainly on coyotes, but also responds to fox, bobcat, and cougar (*Puma concolor*) complaints (Stan Thomas, District Supervisor, APHIS Wildlife Services, pers. comm., 2001). The purpose of the program is to protect sheep and cattle ranching operations in the area, but it may also provide incidental benefits to the population of Columbian white-tailed deer by reducing the number of potential predators on fawns. In

summary, disease and predation are not considered threats to the population.

*D. Inadequacy of existing regulatory mechanisms.* The lack of adequate Federal, State, or local regulatory mechanisms for protecting habitat and controlling take was largely responsible for the decline of the deer. Columbian white-tailed deer in Douglas County have recovered because Federal, State, and local governments have exercised their authorities to protect the subspecies and its habitat.

For example, the State of Oregon currently prohibits hunting of all white-tailed deer in western Oregon (described in Factor B, above). Delisting would provide the State with the flexibility to allow some regulated harvest to reduce population density if necessary to improve herd health.

Douglas County also provides important regulatory protection for Columbian white-tailed deer habitat on private lands through its Comprehensive Plan and Deer Habitat Protection Program (DCPD 1995:45, 2000a). The Comprehensive Plan addresses Oregon's Statewide Planning Goals. Goal 5 requires local governments to conserve open space and protect natural and scenic resources for future generations; Douglas County's Columbian White-Tailed Deer Habitat Protection Program, which is described in more detail under Factor A, was established in 1980 under Goal 5 (DCPD 2000a). State-wide planning Goals 3 and 4 provide guidelines to maintain the rural landscape in Douglas County by protecting agriculture, timber, and transitional (farm/forest) lands. These goals were also incorporated into Douglas County's Columbian White-tailed Deer Habitat Protection Program, and also provide a measure of protection for deer habitat (DCPD 2000a). Douglas County's zoning and planning ordinances and county park designations are recognized in the Recovery Plan as valid methods to secure habitat, and will provide continuing regulatory protection of Columbian white-tailed deer habitat unless changed through a public process.

*E. Other natural or manmade factors affecting its continued existence.* There are a number of other threats to the survival of individual Columbian white-tailed deer in Douglas County. These include road kill, hybridization with black-tailed deer, emaciation, conflicts with private landowners, and fire.

Road kill is one of the major sources of mortality for white-tailed deer in the United States (Halls 1978). Ricca (1999) concluded that road kill was the second most frequent cause of death in his

study; he determined that five deer (17 percent of his marked adult deer) over a period of 3 years were killed by vehicle collisions. Apparently, the incidence of road kill is fairly constant. Almost 20 years earlier, Smith (1981) found car collisions to be the second most frequent cause of death for deer in Douglas County. Although road kill is a major source of mortality for this population, it has not been a limiting factor for population growth (D. Jackson, ODFW, pers. comm., 2001).

Hybridization between Columbian white-tailed deer and black-tailed deer has long been suspected to occur, and probable hybrids have been observed in Douglas County for many years (ODFW 1995). Biologists from ODFW have noted evidence of hybridization (i.e., deer with physical characteristics of both white-tailed and black-tailed deer), but concluded that the rate of cross-breeding is not a threat to the continued existence of the Douglas County population of Columbian white-tailed deer (Kistner and Denney 1991). Gavin (1988) conducted laboratory analyses of muscle samples from Columbian white-tailed deer and Columbian black-tailed deer in Douglas County and found no evidence of hybridization between the two subspecies.

Emaciation, which may be the result of poor forage quality, was determined to be the leading cause of death in a recent study. During 3 years of research on marked deer, Ricca found that 28 percent of the deer that died during the study were emaciated and diseased (see disease discussion in Factor B, above) (1999). This finding is also consistent with an earlier study (Smith 1981). High deer density may result in poor habitat quality through overuse of habitat resources (Ricca 1999). Management actions to reduce deer density or increase habitat quality could reduce the incidence of emaciation. Active habitat management (prescribed burning) to improve forage quality has begun at the NBHMA (R. Klein, pers comm., 2001).

With growth of the deer population, deer-human conflicts have increased. From 1996 to 2000, ODFW recorded 249 complaints from private property owners with deer depredation problems (ODFW, *in litt.* 2001). Resident, suburban deer can cause serious damage to croplands, gardens, and ornamental plantings. Conflict ensues because under the Act it is illegal to "take" listed deer, which includes such actions as hazing or harassing to disperse the deer, even where serious continued damage is occurring. Delisting the Douglas County population of Columbian white-tailed deer will allow

more flexibility in development and implementation of a management plan in order to control and enhance deer populations, while fostering better relationships with landowners and more effective long-term conservation.

Fire has historically played a large part in shaping habitat for Columbian white-tailed deer in Douglas County. Although fire may have negative short-term impacts on habitat, deer distribution, and numbers, the long-term effects can be beneficial by removing decadent brush, promoting the growth of nutritious vegetation, and maintaining the oak/grassland habitat that the deer prefers (Halls 1978; BLM 2000). Columbian white-tailed deer evolved with the occurrence of fire in the ecosystem, and prescribed burning is one of the key management prescriptions for restoring and maintaining habitat quality for the deer at the NBHMA (BLM 2000; Service 2001). The occurrence of a large-scale, devastating wild fire is unlikely. The growing human population of Douglas County demands active fire suppression on public and private lands which will likely convey some protection for the deer.

For the reasons discussed above, we feel that none of these threats pose a serious threat to the persistence of the Douglas County population of Columbian white-tailed deer.

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this population in determining to propose this rule. Based on this evaluation, we propose to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife. The population is robust, and abundant habitat used by the deer has been protected in Douglas County to justify delisting the population.

#### **Effects of the Rule**

Finalization of this proposed rule will affect the protection afforded to the Douglas County population of Columbian white-tailed deer under the Act. Taking, interstate commerce, import, and export of deer from this population will no longer be prohibited under the Act. In addition, if the Douglas County population of the Columbian white-tailed deer is removed from the List of Endangered and Threatened Wildlife, Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not

likely to jeopardize the continued existence of the deer.

Harvest and permitted scientific take will be regulated by the State of Oregon, and will be considered in the context of potential effects to population stability (ODFW, *in litt.* 2001). Biological data such as sex ratios, age, reproductive status, and health status (i.e., parasitism and bacterial infections) from individual deer taken through legal harvest or the issuance of special permits would be available to inform future management. Delisting the Douglas County population could have positive effects in terms of management flexibility to State and local governments. Deer densities in selected areas could be reduced by management actions. Individual deer could be controlled by hazing, and targeted individuals could be moved where repeated severe damage to agricultural crops, gardens, or ornamental plantings was documented. Thus, delisting would allow managers greater flexibility to take actions to reduce overcrowding in selected areas, which could result in a healthier deer population.

The proposed delisting of the Douglas County DPS of Columbian white-tailed deer will not change the endangered status of the Columbia River DPS of this subspecies. It will remain fully protected by the Act.

### Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the 5-year monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

The Service with the State and the Recovery Team will develop and implement a statistically sound, 5-year monitoring program designed to assess the sustainability of the population through tracking of population parameters that may include the population size, trend, recruitment, and distribution. We will publish in the **Federal Register** a notice of availability of the draft monitoring plan, in order to provide the public the opportunity to comment on the content of the plan. We will issue a final monitoring plan and annually assess the results of the post-delisting monitoring of the Douglas

County Columbian white-tailed deer population.

At the end of the 5-year monitoring period, we will decide if relisting, continued monitoring, or an end to monitoring activities is appropriate. If warranted (e.g., data shows a significant decline or increased threats), we will consider continuing monitoring beyond the 5-year period and may modify the monitoring program based on an evaluation of the results of the initial 5-year monitoring program.

### Public Comments Solicited

We intend that any final action resulting from this proposal to remove the Douglas County population of Columbian white-tailed deer from the List of Endangered and Threatened Wildlife will be as accurate and effective as possible. Therefore, we solicit any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal. Comments should be sent to the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. Given the high likelihood of requests, and the need to proceed as expeditiously as possible, the Service will hold a public hearing on the date and location described in the **DATES** and **ADDRESSES** sections above.

Comments are particularly sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Douglas County population of the Columbian white-tailed deer and its habitat that would result from implementing the measures outlined in this proposed rule;
- (2) Additional information concerning the range, distribution, and population size of this population;
- (3) Current or planned activities in the range of the population and their likely impacts on the population and its habitat; and
- (4) Appropriate parameters to monitor and to assess the population status.

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN-AF43]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our

Oregon Fish and Wildlife Office at telephone number 503/231-6179.

Our practice is to make comments available for public review during regular business hours, including names and home addresses of respondents. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### Clarity of the Rule

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

### Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and record keeping activities (see 5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, record keeping, or disclosure requirements imposed on ten or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. This rule does not include any collections of information that require

approval by OMB under the Paperwork Reduction Act.

**National Environmental Policy Act**

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this designation in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Executive Order 13211**

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare

Statements of Energy Effects when undertaking certain actions. As this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

**References Cited**

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The primary author of this proposed rule is Cat Brown, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

**Proposed Regulation Promulgation**

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. We propose to amend section 17.11(h) by revising the entry for Columbian white-tailed deer, *Odocoileus virginianus leucopareia* under “Mammals” to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Deer, Columbian white-tailed.	<i>Odocoileus virginianus leucurus.</i>	U.S.A. (WA, OR) ....	Columbia River (Pacific, Wahkiakum, Cowlitz, Clark and Skamania Counties, WA, and Columbia, Clatsop and Multnomah Counties, OR).	E	1, __	NA	NA
*	*	*	*	*	*	*	*

Dated: May 31, 2002.  
**Steve Williams,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 02–15189 Filed 6–20–02; 8:45 am]  
**BILLING CODE 4310–55–P**