

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AI60

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Black-Footed Ferrets in South-Central South Dakota**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the Rosebud Sioux Tribe (Tribe), the U.S. Forest Service, and the U.S. Bureau of Indian Affairs, will reintroduce endangered black-footed ferrets (*Mustela nigripes*) into south-central South Dakota on the Rosebud Sioux Reservation. The purposes of the reintroduction are to implement actions required for recovery of the species and to evaluate and improve reintroduction techniques and management applications. We may release surplus captive-raised or wild-born black-footed ferrets annually for several years until a self-sustaining population is established. If this reintroduction program is successful, a wild population could be established in 5 years or less. The Rosebud Sioux Reservation black-footed ferret population will be established as a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). We will manage this population under provisions of this special rule. An environmental assessment and finding of no significant impact have been prepared on this action.

DATES: The effective date of this rule is May 16, 2003.

ADDRESSES: You may inspect the complete file for this rule during normal business hours at the Ecological Services Office, 420 South Garfield Avenue, Suite 400, Pierre, South Dakota 57501, or telephone (605) 224-8693. You must make an appointment in advance if you wish to inspect the file.

FOR FURTHER INFORMATION CONTACT: Scott Larson or Pete Gober at the above address, telephone (605) 224-8963, extensions 27 and 24, respectively.

SUPPLEMENTARY INFORMATION:**Background**

1. *Legislative:* Congress made significant changes to the Act in 1982 with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." On the basis of the best available information, we must determine whether an experimental population is "essential" or "nonessential" to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. "Take" is defined by the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition on take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the

species' designation elsewhere in its range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as threatened species when the NEP is located within a National Wildlife Refuge or National Park, and thus section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

Individual animals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In this case, the donor ferret population is a captive-bred population, which was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, wild progeny from other NEPs (and which also originated from captive sources)