

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 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 would 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.

Individuals 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 order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represents an agreement between the Service, the affected State and Federal agencies, and

persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR § 17.81(d)).

We have not yet identified possible alternatives for accomplishing our recovery goals in Arizona and New Mexico and we do not know what the preferred alternative (the proposed action) or other alternatives might entail. Once identified, the alternatives will be carried forward into detailed analyses pursuant to NEPA.

Any process to release falcons as “experimental” will require that we: (1) Compile and analyze all new biological information on the species; (2) review and update the administrative record; (3) review the overall approach to the conservation and recovery of the falcon in the United States; (4) review available information that pertains to the habitat requirements of this species, including material received during the public comment period from this notice and comments on the listing; (5) review actions identified in the northern aplomado falcon recovery plan (Service 1990); (6) determine what areas, if any, might require special management or areas that should be excluded from the experimental population area; (7) write a draft environmental assessment and present alternatives to the public for review and comment; (8) incorporate public input and use current knowledge of falcon habitat use and availability to precisely map a proposed experimental population area; (9) present this proposal in a proposed rule for publication in the **Federal Register** and solicit comments from the public; and (10) finalize the environmental assessment and the rule designating an experimental population and identifying an experimental population area, and authorizing the release of falcons as experimental in New Mexico and Arizona, or adopt the no action alternative and not permit the release of northern aplomado falcons as experimental in these areas.

We are the lead Federal agency for compliance with NEPA for this action. The draft environmental assessment will incorporate public concerns in the analysis of impacts associated with the proposed action and associated project alternatives. The draft environmental assessment will be sent out for a minimum 30-day public review period, during which time comments will be solicited on the adequacy of the document. The final environmental document (e.g., environmental assessment or environmental impact statement) will address the comments we receive during public review and will be furnished to all who commented

on the draft environmental assessment, and made available to anyone who requests a copy. This notice is provided pursuant to regulations for implementing NEPA.

Public Comments Solicited

The Service wishes to ensure that any proposed rulemaking to designate an experimental population for the aplomado falcon we might issue and the draft environmental assessment on the proposed action effectively evaluate all potential issues associated with this action. Therefore, we request comments or recommendations concerning reasons why any particular area should or should not be included in an experimental population designation, information on the distribution and quality of habitat for the northern aplomado falcons, land or water use practices and current or planned activities in areas that may be affected by a designation of an experimental population, and any other pertinent issues of concern. We seek comment from the public, as well as Tribal, local, State, and Federal government agencies, the scientific community, industry, or any other interested party. To promulgate a proposed rule to establish an experimental population for the aplomado falcon and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information received.

We will give separate notice of the availability of the draft environmental assessment, when completed, so that interested and affected people may comment on the draft and have input into the final decision. The draft environmental assessment will undergo a minimum 30-day public comment period.

References

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